

## Table of Contents

INTRODUCTION .....	1
--------------------	---

### *Law Summary Profiles*

ABANDONED SHIPWRECK ACT OF 1987 .....	10
AMERICAN FOLKLIFE PRESERVATION ACT .....	12
AMERICAN INDIAN RELIGIOUS FREEDOM ACT .....	13
ANADROMOUS FISH CONSERVATION ACT .....	15
ANTIQUITIES ACT OF 1906 .....	17
ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979 .....	19
ATLANTIC STRIPED BASS CONSERVATION ACT .....	21
BALD EAGLE PROTECTION ACT .....	23
CLEAN AIR ACT .....	25
CLEAN WATER ACT .....	28
COASTAL BARRIER RESOURCES ACT .....	33
COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION ACT .....	35
COASTAL ZONE MANAGEMENT ACT .....	37
COASTAL ZONE PROTECTION ACT .....	41
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT .....	42
CONSERVATION PROGRAMS ON MILITARY RESERVATIONS .....	45
DEEPWATER PORT ACT OF 1974 .....	47
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986 AND THE POLLUTION PREVENTION ACT OF 1990 .....	49
EMERGENCY WETLANDS RESOURCES ACT .....	52
ENDANGERED SPECIES ACT .....	54
ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970 .....	57
ESTUARIES AND CLEAN WATERS ACT .....	58

ESTUARY PROTECTION ACT .....	60
ESTUARY RESTORATION ACT .....	62
FARMLAND PROTECTION POLICY ACT.....	65
FEDERAL FACILITIES COMPLIANCE ACT .....	67
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT .....	68
FEDERAL LAND POLICY AND MANAGEMENT ACT .....	70
FEDERAL WATER PROJECT RECREATION ACT .....	71
FISH AND WILDLIFE CONSERVATION ACT .....	73
FISH AND WILDLIFE COORDINATION ACT .....	75
FISH AND WILDLIFE PROGRAMS IMPROVEMENT AND NATIONAL WILDLIFE REFUGE SYSTEM CENTENNIAL ACT OF 2000 .....	79
FLOOD CONTROL ACT OF 1944.....	80
FOOD SECURITY ACT OF 1985 .....	82
HAZARDOUS MATERIALS TRANSPORTATION ACT .....	84
HISTORIC SITES ACT OF 1935 .....	86
HISTORICAL AND ARCHEOLOGICAL DATA-PRESERVATION.....	88
LAND AND WATER CONSERVATION FUND ACT.....	90
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.....	92
MARINE MAMMAL PROTECTION ACT .....	94
MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT .....	96
MIGRATORY BIRD CONSERVATION ACT.....	100
NATIONAL ENVIRONMENTAL POLICY ACT .....	101
NATIONAL HISTORIC PRESERVATION ACT .....	105
NATIONAL INVASIVE SPECIES ACT OF 1996 .....	108
NATIONAL TRAILS SYSTEM ACT .....	110
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT .....	112
NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT .....	115
NOISE CONTROL ACT OF 1972 .....	117

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT.....	119
NORTH AMERICAN WETLANDS CONSERVATION ACT .....	121
OIL POLLUTION ACT OF 1990 .....	123
OUTER CONTINENTAL SHELF LANDS ACT .....	125
POLLUTION PREVENTION ACT.....	127
RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENTS ACT OF 1992 .....	129
RESERVOIR AREAS-FOREST COVER.....	131
RESOURCE CONSERVATION AND RECOVERY ACT.....	133
RIVERS AND HARBORS ACTS.....	137
SAFE DRINKING WATER ACT .....	140
SOIL AND WATER RESOURCES CONSERVATION ACT .....	142
SOLID WASTE DISPOSAL ACT .....	144
SUBMERGED LAND ACT.....	146
SURFACE MINING CONTROL AND RECLAMATION ACT.....	147
SUSTAINABLE FISHERIES ACT .....	149
TOXIC SUBSTANCES CONTROL ACT .....	151
WATER RESOURCES DEVELOPMENT ACTS.....	154
WATER RESOURCES PLANNING ACT .....	165
WATERSHED PROTECTION AND FLOOD PREVENTION ACT .....	167
WILD AND SCENIC RIVERS ACT.....	169
WILDERNESS ACT .....	171

# ABANDONED SHIPWRECK ACT OF 1987

**LEGISLATIVE TITLE:** Abandoned Shipwreck Act of 1987

**UNITED STATES CODE CITATION:** 43 U.S.C. §§ 2101- 2106

**OTHER TITLES AND POPULAR NAMES:** ASA

**SUMMARY:** This law provided for the United States to assert ownership over any abandoned shipwreck in State waters and submerged lands. Submerged lands means lands that are "lands beneath navigable waters" as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301). It also provides guidelines for the designation of abandoned shipwrecks as national historic parks, recreation areas and marine biological sanctuaries. The act provides Federal authority to transfer ownership of abandoned shipwrecks to the state on whose submerged lands the wreck is located. The act provides Federal protection to any shipwreck that meets the criteria for eligibility for inclusion in the National Register for Historic Places. Therefore, disposal of dredged or other material on or in the near vicinity of such wrecks is prohibited.

The Department of the Interior administers the act through regulations issued by the National Park Service. The act requires that study and evaluation standards be promulgated by the National Park Service. Federal agencies and States are to develop companion regulations. The Corps does not have a specific companion regulation at this time, but uses the National Park Service's Abandoned Shipwreck Act Guidelines, and has integrated consideration of shipwrecks into the general planning, engineering, operations, and regulatory Corps regulations cited below. Basically, for Federal actions, the Section 106 process, National Historic Preservation Act, applies, as set forth in implementing regulations 36 C.F.R. 800. The act allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

**RESOURCES COVERED:** Historic and cultural properties; abandoned shipwrecks, cargo, and other contents.

**COMPLIANCE REQUIREMENTS:** Corps reports and NEPA documents must show evidence of consultation with the State Historic Preservation Officers (SHPOs) and, if necessary, the Advisory Council on Historic Preservation (ACHP) for significance and impact determinations, and agreements about mitigation stipulations, if required. If public or private sector recovery is proposed for a shipwreck or submerged site under Corps jurisdiction, a permit must be obtained from the appropriate Corps office under the Archaeological Resources Protection Act of 1979, as amended.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, SHPOs, and appropriate public and private sector interests (Secretary of Commerce, ACHP, sport divers, professional dive operators, archaeologists, historic preservationists, fishermen).

**Process:** Submerged resources are considered by the Corps in accordance with Section 106 of the National Historic Preservation Act, and as set forth in the implementing regulation 36 C.F.R. 800. The act authorizes States to issue permits to non-Federal entities to work with submerged resources. However, since States can not issue permits to Federal agencies under this act or the National Historic Preservation Act, Corps offices coordinate with State officials and, to the extent practicable, provide information similar in scope to that required under the State permit process.

**Product:** Determinations of significance (National Register of Historic Places) and effect are made in consultation with the SHPO and ACHP, and plans are made to preserve (avoid) or recover (mitigate) significant remains that would be affected by Corps activities.

**Timing/Schedule:** Depending upon available information and the nature and significance of resources, effect determinations may take 30 days (No Effect) to over a year. Studies and significance and effect determinations should be completed during the feasibility phase. Mitigation is ordinarily done just prior to construction.

**CORPS GUIDANCE** When Sec. 106 of the National Historic Preservation Act is triggered, the following regulations apply:

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** National Historic Preservation Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** Guidelines for Recreational Use and Preservation of Abandoned Shipwrecks and to Administer and Manage Underwater Resources; National Register Nominations for Submerged Resources; Historic American Engineering Record Guidelines for Ships

**Federal Register Citation:** Abandoned Shipwreck Act Guidelines (proposed regulations) F.R. Vol. 54, No. 63, Tuesday, April 4, 1989; Final guidelines, F.R. Vol. 55, No. 50116, December 4, 1990; Correction, F.R. Vol 55 No. 51528, December 14, 1990; Final guidelines correction, F.R. Vol. 56, No. 7875, February 26, 1991.

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** Management of abandoned shipwrecks and submersed resources is vested with the Secretary of Interior, National Park Service and delegated SHPO. The Corps, while having no direct authority, has limited opportunity to work in coordination with the Secretary of Interior and SHPOs on Corps projects to incorporate elements within the design and operations that facilitate access and utilization of cultural resources by recreational and historical interests.

# AMERICAN FOLKLIFE PRESERVATION ACT

**LEGISLATIVE TITLE:** American Folklife Preservation Act

**UNITED STATES CODE CITATION:** 20 U.S.C. §§ 2101 - 2107

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act establishes, in the Library of Congress, an American Folklife Center to preserve and present American folklife. The Center is to encourage research and training, foster awareness, and promote performances, festivals, exhibits, workshops, and educational programs. The act does not routinely affect Corps day-to-day operations. However, the Library of Congress could contact the Corps and request use of a site, or objects.

**RESOURCES COVERED:** Historic and Cultural Properties; American folklife - traditional expressive culture within the various groups in the United States.

**COMPLIANCE REQUIREMENTS:** Use of sites or objects would be regulated under other historic preservation laws regarding impacts and curation standards.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Library of Congress

**Process:** Coordination

**Product:** Loan of cultural items

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None

**MANAGEMENT OPPORTUNITIES:** The Corps may participate in Library of Congress and American Folklife Center educational programs by providing information, records, displays, exhibits, and artifacts.

# AMERICAN INDIAN RELIGIOUS FREEDOM ACT

**LEGISLATIVE TITLE:** American Indian Religious Freedom Act

**UNITED STATES CODE CITATION:** 42 U.S.C. § 1996

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act that states the policy of the U.S. is to protect and preserve for American Indians, Eskimo, Aleut, and native Hawaiians, their inherent rights of freedom to believe, express, and exercise traditional religions. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites. A related law, the National Historic Preservation Act (16 U.S.C. 470) greatly strengthens the requirements for Federal agencies to ensure that tribal values are taken into account. Tribes are given greater control over patrimonial objects and are allowed to establish their own culturally-specific criteria of significance.

**RESOURCES COVERED:** Historical and Cultural Properties; Sacred sites, use and possession of sacred objects, and traditional Native American ceremonies and rites.

**COMPLIANCE REQUIREMENTS:** Federal agencies must make reasonable efforts to locate and coordinate with organizations, and communities of groups covered by the Act to insure that religious rights are accommodated during project planning, construction, and operation. Efforts must be documented in Corps project reports and NEPA documents.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Organizations, and communities of groups covered by the Act

**Process:** Formal and informal correspondence and meetings.

**Product:** Presidential report to Congress regarding changes in administrative policy and procedure in fulfillment of this act. If sacred sites and objects are involved for a Federal project, the product may be an agreement between the Federal agency and organizations and communities of groups covered by the Act regarding access and use.

**Timing/Schedule:** Consultation begins, whenever the Federal agency is made aware of relevant resources, or upon the request of traditional organizations and communities of groups covered by the Act.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance, PGL No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** Native American Graves Protection and Repatriation Act of 1990; National Historic Preservation Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None

**MANAGEMENT OPPORTUNITIES:** None identified.

# ANADROMOUS FISH CONSERVATION ACT

**LEGISLATIVE TITLE:** Anadromous Fish Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 757a to 757g

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act authorizes the Secretary of the Interior to enter into a cooperative agreements with the States and other non--Federal interests for the conservation, development, and enhancement of the Nation's anadromous fishery resources that are subject to depletion from water resources developments and other causes, or with respect to which the Federal government has made conservation commitments concerning such resources by international agreements. [Administration of the program authorized by this Act was transferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970 (historical note accompanying 16 U.S.C. 755; 35 F.R. 15627).] The program emphasizes the conservation and enhancement of anadromous fishery resources and the fish in the Great Lakes and Lake Champlain that ascend streams to spawn. The Act established a grant program to provide funding to states for habitat or fish enhancement work, and specifies cost-sharing and appropriation provisions.

**RESOURCES COVERED:** Anadromous fish, their habitat and fishery resources in the Great Lakes and Lake Champlain that ascend streams to spawn are specifically mentioned. With the exception of the State of Idaho, projects in the Columbia River system are specifically excluded from the grant program authorized by this Act (16 U.S.C. 757e). Grant funds are not to be used for law enforcement, public relations, or to construct facilities primarily for the commercial harvest, handling and processing of fishery products.

**COMPLIANCE REQUIREMENTS:** No compliance requirements for the Civil Works program specified in this Act.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** There are no consultation requirements specified in the Act Consultation, if necessary, would be with the state agencies that have received grants under the terms of the Act, as well as the granting agency.

**Process and Product:** Guidance on applying for the grants is provided in 50 C.F.R. 401. States provide progress and final reports to U.S. Fish and Wildlife Service or National Marine Fishery Service (NMFS) regional offices.

**Timing/Schedule:** Progress reports are prepared periodically, financial reports are prepared annually by the USFWS and NMFS Regional offices.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1150-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Catalog of Federal Domestic Assistance, Chapter 11.405, General Services Administration. This catalog is a compendium of Federal programs, projects, services and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and established by the Federal Government. Chapter 11.405 specifically discusses the scope, procedures and eligibility requirements for the grant program authorized by this Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service. Administration of the program authorized by this Act was transferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970 (16 U.S.C. 755).

**Guidance Title:** NMFS - Departmental Administrative Order 203-26; 50 C.F.R. Part 401.

**Code of Federal Regulations Citation:** 50 C.F.R. 401

**MANAGEMENT OPPORTUNITIES:** Under the program authorized by this Act, money is granted to state agencies and/or non-Federal interests. Funds can be used to improve spawning areas, install fishways, construct fish protection devices and hatcheries, conduct research to improve management, and increase anadromous fish resources. At the earliest stage in planning, when identifying problems and opportunities, planners should determine if opportunities exist to contribute to the objectives of this Act, including opportunities to complement state anadromous fishery habitat restoration efforts. Also, participants in the grant program prepare reports on their activities; this information may be useful in Corps reconnaissance or feasibility studies.

This Act authorizes the Secretary (of Interior originally, now Commerce) to conduct studies that contribute to the objectives of the Act, and make such recommendations as the Secretary determines to be appropriate, regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources, and the fish in the Great Lakes and Lake Champlain that ascend streams to spawn. The reports on such studies and the recommendations of the shall be transmitted to the States, the Congress, and the Federal water resources construction agencies for their information. This Act shall not be construed as authorizing the formulation or construction of water resources projects, except that water resources projects which are determined by the Secretary to be needed solely for the conservation, protection, and enhancement of such fish may be planned and constructed by the Corps of Engineers, (other agencies were also listed) or by the States, with funds made available by the Secretary under this Act and subject to the cost-sharing and appropriations provisions this Act (16 U.S.C. 757b). The Corps can examine the recommendations in these reports in light of ecosystem restoration opportunities discussed in ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information, taking into account current Administration policies and budgetary priorities.

## ANTIQUITIES ACT OF 1906

**LEGISLATIVE TITLE:** Antiquities Act of 1906

**UNITED STATES CODE CITATION:** 16 U.S.C. § 431 - 433

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act provides for the protection of historic and prehistoric ruins and objects of antiquity on lands owned or controlled by the Federal Government, and authorizes scientific investigation of antiquities on Federal lands, subject to permits and other regulatory requirements. Paleontological resources are covered by this Act. The Act also provides for criminal penalties for anyone desecrating, injuring, excavating, or otherwise destroying any historic or prehistoric ruin or monument without express Federal permission. Authorizes the President to declare by public proclamation historic and prehistoric landmarks as national monuments. Federal agencies are permitted to transfer objects of antiquity to properly qualified institutions.

**RESOURCES COVERED:** Historical and Cultural Properties; Historic or prehistoric ruins or monuments, or any objects of antiquity, including landmarks, prehistoric structures, and landmarks.

**COMPLIANCE REQUIREMENTS:** None. The Antiquities Permit has been replaced by the permit required under the Archeological Resources Protection Act of 1979.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Designated agency representatives from the Departments of Interior, Agriculture and Army may issue permits to reputable museums, universities, colleges, or other recognized scientific or educational institutions.

**Process:** Persons must apply for permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon lands under the jurisdiction of the Secretaries of the Interior, Agriculture, and Army.

**Product:** Permit - the permit required under this act has been replaced by the Archeological Resources Protection Act permit.

**Timing/Schedule:** Prior to any work.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** Archaeological Resources Protection Act of 1979, as amended

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 3

**MANAGEMENT OPPORTUNITIES:** The President is authorized to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments and to afford them proper protection. Further, the Corps can pursue national monument status for significant historic properties under agency control. If obtained, appropriate protection is to be provided to such properties. The Act states that the Secretary of the Army may grant permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon lands under his control. Permits should only be granted to properly qualified individuals and the work should be undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions.

# ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979

**LEGISLATIVE TITLE:** Archeological Resources Protection Act of 1979

**UNITED STATES CODE CITATION:** 16 U.S.C. § 470 et seq

**OTHER TITLES AND POPULAR NAMES:** ARPA

**SUMMARY:** The Act was enacted to preserve and protect resources and sites on Federal and Indian lands. It fosters cooperation between governmental authorities, professionals, and the public. The Act prohibits the removal, sale, receipt, and interstate transportation of archaeological resources obtained illegally (i.e., without permits) from public or Indian lands and authorizes Federal agency permit procedures for investigations of archeological resources on public lands under the agency's control. Permits are required to excavate and remove those cultural remains covered by the Act.

The purpose of the ARPA permit process is to ensure that individuals and organizations wishing to work with Federal resources have the necessary professional qualifications, and that Federal standards and guidelines for research and curation are followed. The process also allows the SHPO to review and comment on ARPA permit applications. Federal agencies do not issue ARPA permits to themselves or to contractors. The Scope of Work and contractors proposal, which constitute the contract, ensure that contractors comply with Federal standards and guidelines. The ARPA permit replaces the permit required by the Antiquities Act of 1906.

**RESOURCES COVERED:** Historical and Cultural Properties; Any material remains of past human life or activities which are of archaeological interest. Material shall include but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items.

**COMPLIANCE REQUIREMENTS:** ARPA requires Federal agencies to conduct archaeological investigations on lands under their jurisdiction to determine the nature and extent of the protected cultural resources present, and to help manage extant resources in accordance with permit and enforcement provisions of the Act.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** State Historic Preservation Officer (SHPO)

**Process:** Persons wishing to excavate or remove any archeological resource located on public lands or Indian lands must apply for a permit from the appropriate Federal land manager as defined by the Act and its implementing regulations. The application must include information on the time, scope, location, and specific purpose of the proposed work, and describe professional qualifications and anticipated scientific contributions. Permit applications are approved by the Federal land managers in consultation with their historic preservation staff and the SHPO. Criminal penalties are also established for violations of the Act.

**Product:** The applicant receives a permit, while, as a condition of the permit, the agency receives a report of investigations and documentation of appropriate curation of materials.  
**Timing/Schedule:** No time frame is established for permit processing. The permit must be received prior to any archeological work being done on Federal land.

## **CORPS GUIDANCE**

ER 405-1-12 Change 27, October 1988, Real Estate Handbook, paragraph 8-65, Implementation of ARPA Uniform Regulations.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections.

**Civil Works Engineering:** 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Regulatory:** 33 C.F.R. 320-330; 33 C.F.R. 325 (Appendix C) - Processing of Department of the Army Permits, Procedures for the Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** Refer to ER 405-1-12, Change 27, 1 Oct. 88, Real Estate Handbook, para. 8 -65, Implementation of ARPA Uniform Regulations. Figure 8-22 is an example of ENG Form 4922, the permit application; Figure 8-23, is an example of ENG Form 4923-R, the permit.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior

**Guidance Title:** Archeological Resources Protection Act Supplemental Regulations

**Code of Federal Regulations Citation:** 43 C.F.R. 7, Protection of Archaeological Resources; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**MANAGEMENT OPPORTUNITIES:** None identified.

# ATLANTIC STRIPED BASS CONSERVATION ACT

**LEGISLATIVE TITLE:** Atlantic Striped Bass Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1851

**OTHER TITLES AND POPULAR NAMES:** Striped Bass Conservation, Atlantic Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000;

**SUMMARY:** This Act authorizes and encourages the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass. It provides for the Atlantic States Marine Fisheries Commission to monitor the implementation and enforcement by coastal states of their Atlantic striped bass management plan. If a state is found to be in violation of the plan, a moratorium can be declared in that state by the Secretaries of Commerce and Interior, prohibiting fishing for Atlantic striped bass in that state, as well as civil penalties and civil forfeitures invoked. The Act also directs the Secretaries of Commerce and Interior to conduct continuing, comprehensive studies of Atlantic striped bass stocks, as well as a study of the socio-economic benefits of the Atlantic striped bass resource, and to make biennial reports to Congress concerning these studies.

This Act was reauthorized by the Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000 (16 U.S.C. 1361). Subtitle A of this Act (16 U.S.C. 5156) directs the Secretaries of Commerce and Interior to conduct a study to determine if the distribution of year classes in the Atlantic striped bass population is appropriate for maintaining adequate recruitment and sustainable fishing opportunities. Subtitle B (16 U.S.C. 5101) reauthorizes the Atlantic Coastal Fisheries Cooperative Management Act.

**RESOURCES COVERED:** Atlantic striped bass fish populations

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretaries of Commerce and Interior are to consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity in preparing regulations governing fishing for Atlantic striped bass in the exclusive economic zone.

**Process and Product:** None Specified

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Magnuson Fishery Conservation and Management Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Departments of Commerce (National Oceanic and Atmospheric Administration) and Interior

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities to support populations of Atlantic striped bass through the restoration and protection of essential fish habitats through Civil Works authorities and programs. Ecosystem restoration initiatives may complement the fishery management plans, and there may be opportunities to contribute to regional coordination and assistance efforts.

## BALD EAGLE PROTECTION ACT

**LEGISLATIVE TITLE:** Bald Eagle Protection Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 668, 668 note, 668a-668d

**OTHER TITLES AND POPULAR NAMES:** Bald Eagle Act; Bald and Golden Eagle Protection Act

**SUMMARY:** This Act prohibits wantonly possessing, selling, transporting, or trading of a bald or golden eagle or eagle part, alive or dead. Whoever so violates will be subject to criminal or civil penalties. The statute authorizes searches, seizures and arrests for enforcement purposes. The Secretary of the Interior can issue a permit for taking, possession and transporting of bald and golden eagles for scientific, exhibition, and religious purposes, and may permit the taking of golden eagle nests if they interfere with resource development or recovery operations 16 (U.S.C. 668(a)).

**RESOURCES COVERED:** Wildlife; American or golden eagle, alive or dead and any part, nest or egg.

**COMPLIANCE REQUIREMENTS:** The Endangered Species Act (16 U.S.C. 1531-1542) contains requirements on Corps projects concerning bald and golden eagles. See Section 7 coordination and consultation of the Endangered Species Act for additional requirements regarding bald eagles.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See requirements under the Endangered Species Act

**Process:** See requirements under the Endangered Species Act

**Product:** Permits for the taking, possession and transportation of eagles for scientific, religious, conservation or agricultural purposes.

**Timing/Schedule:** See requirements under the Endangered Species Act

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies , Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 325

**FOR MORE INFORMATION SEE:** Endangered Species Act

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** U.S. Fish and Wildlife Service

**Guidance Title:** Interagency Cooperation- ESA of 1973, as amended; Final Rule

**Code of Federal Regulations Citation:** 50 C.F.R. 402; Exemption Procedures 50 C.F.R. 450

**MANAGEMENT OPPORTUNITIES:** Opportunities to provide protection to bald and golden eagles may be possible as part of ecosystem restoration initiatives, or as part of natural resource management initiatives.

## CLEAN AIR ACT

**LEGISLATIVE TITLE:** Clean Air Act

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 7401-7671g

**OTHER TITLES AND POPULAR NAMES:** CAA; Air Pollution Prevention and Control Act

**SUMMARY:** The purpose of this Act is to protect public health and welfare by the control of air pollution at its source, and to set forth primary and secondary National Ambient Air Quality Standards (NAAQS) to establish criteria for States to attain, or maintain, these minimum standards. Section 118 (42 U.S.C. 7418) specifies that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall be subject to, and comply with, all Federal, State, interstate, and local requirements respecting the control and abatement of air pollution in the same manner, and to the same extent as any non-governmental entity.

States are responsible for developing a State Implementation Plan (SIP) for the prevention, control and abatement of air pollution according to National Ambient Air Quality Standards (NAAQS). National Emissions Standard for Hazardous Air Pollutants (NESHAPs) and Federal emissions standards for motor vehicles are largely determined by the Environmental Protection Agency. Section 176(c) (42 U.S.C. 7596(c)) requires that Federal agencies do not (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a SIP. EPA has published its final General Conformity Rule (40 C.F.R. Part 93) to implement Section 176(c) addressing how Federal agencies are to demonstrate that activities in which they engage, support, permit, or approve conform to CAA State Implementation Plans. The EPA rule contains a number of "exempted" or "presumed to conform" activities which include a number of Corps activities. CAA conformity determinations will be completed during feasibility studies and included in feasibility reports.

Section 309 (42 U.S.C. 7609) calls for the Administrator of the EPA to review and comment on the environmental impact of (1) legislation proposed by any Federal agency, (2) newly authorized Federal projects for construction and any major agency action, and (3) proposed regulations published by any department of agency of the Federal Government. The Act also provides for financial and technical assistance to State agencies for research and training in air pollution control and prevention. Technical advisory committees are established to provide support, as well as publish information on air pollution control techniques. A Federal program is established for research into alternative fuel technology.

**RESOURCES COVERED:** Air; air pollution; criteria pollutants (sulphur dioxide, particulate matter, carbon monoxide, volatile organic compounds, nitrogen dioxide, lead), ozone depleting substances, and the 189 hazardous air pollutants regulated under Section 112 of the Act (42 U.S.C. 7412).

**COMPLIANCE REQUIREMENTS:** Corps activities resulting in the discharge of air pollutants must conform to NAAQS and SIPs, unless the activity is explicitly exempted by EPA regulations. Section 173 (42 U.S.C. 7503) requires a permit from EPA to construct or operate a new or modified major stationary source. Major stationary sources are required to obtain a Title V Operating Permit in addition to permits to construct. Maximum achievable control technology (MACT) must be attained for sources for which a MACT standard has been promulgated. It is important to consult with State air regulatory personnel to determine regulatory requirements, as many non-major sources that do not require a Federal permit may require operating permits under State programs.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** State and local agencies; EPA. As of this time, all but a few States have approved or proposed for approval Title V operating permit programs. Permits required under State SIPs are also done at the State level.

**Process:** EPA reviews and comments upon the environmental impact of proposed legislation and newly authorized projects for construction and any other major agency action. Permit must be secured to construct or operate new or modified major stationary source in certain areas of the U.S. SIPs are the primary mechanisms used by the state to ensure compliance with EPA area wide standards.

**Product:** EPA Permits for stationary sources of air pollution.

**Timing/Schedule:** Permitting authority must approve or disapprove a complete permit application within 18 months of the date it receives the application. At least one-third of the permit applications will be acted upon within a three year period.

## CORPS GUIDANCE

CECW-ON & CEEC-S, 30 Jan 89, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ETL 1110-1-118 Hazards involved with use of asbestos containing material (ACM) and prohibition on use of friable asbestos.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Environmental Protection Agency, State agencies for air pollution control

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 40 C.F.R. 50, EPA Regulations on National Primary and Secondary Air Quality Standards; 40 C.F.R. 58, EPA Ambient Air Quality Surveillance Regulations; 40 C.F.R. 60, Standards of Performance for New Stationary Sources; 40 C.F.R. 61, EPA Regulations on Asbestos Removal and Disposal; 40 C.F.R. 82, Protection of Stratospheric Ozone, and Appendix A, List of Ozone Depleting Chemicals; 40 C.F.R. 93, EPA Regulations on Determining Conformity of General Federal Actions to State or Federal Implementation Plans; 48

C.F.R. 23, Ozone Depleting Substances; Office of Counsel CECC-E Memorandum on EPA's Clean Air Act General Conformity Rule, 20 April 1994.

**MANAGEMENT OPPORTUNITIES:** None identified.

## CLEAN WATER ACT

**LEGISLATIVE TITLE:** Clean Water Act

**UNITED STATES CODE CITATION:** 33 U.S.C. 1251 et seq.

**OTHER TITLES AND POPULAR NAMES:** Water Pollution Control Act, Federal Water Pollution Control Act Amendments; Water Quality Act; FWPCA; CWA

**SUMMARY:** This Act is the principle law governing pollution control and water quality of the Nation's waterways. The objective of this Act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters (33 U.S.C. 1251). The Act has been amended numerous times and given a number of titles and codification (see footnote below). It was originally enacted as the Water Pollution Control Act in 1948 (P.L. 80-845), and was totally revised by the 1972 amendments, the Federal Water Pollution Control Act Amendments (P.L. 92-500). The 1972 amendments gave the Act its current form, and established a national goal of eliminating all pollutant discharges into U.S. waters by 1985 and an interim goal of making the waters safe for fish, shellfish, wildlife and people by July 1, 1983 (86 Stat. 816, 33 U.S.C. 1251). The 1977 amendments (the Clean Water Act of 1977 (P.L. 95-217)) gave the Act its current title. Additional amendments were enacted in 1981 (Municipal Wastewater Treatment Construction Grants Amendments (P.L. 97-117)) and in 1987 (Water Quality Act of 1987 (P.L. 100-4).

The Federal Water Pollution Control Act was amended by the Beaches Environmental Assessment and Coastal Health Act of 2000 (33 U.S.C. 1251), intended to improve the quality of coastal recreation waters. It calls for the adoption of coastal recreation water quality criteria and standards by the states. The Administrator of EPA is required to publish performance criteria for monitoring and assessment of coastal recreation waters, and provisions to assure the prompt notification of the public, local governments, and the EPA of any exceeding or likelihood of exceeding of applicable water quality standard at public beaches.

The Act provides standards and enforcement, a number of regulatory programs with permits and licenses, grants and revolving funds, as well as general provisions and provisions for research and related programs. Because of the extensiveness of the Act and the complexity of the numerous implementing regulations and guidance documents that have been developed in response to the various provisions of the Act, it is not possible to provide a detailed summary of these provisions, documents, policies and guidance in this profile. Instead, those provisions particularly relevant to the Civil Works program are briefly summarized below. Corps personnel requiring more detailed information are encouraged to refer to Corps guidance documents, interpretation from Corps counsel and seek guidance from HQUSACE.

**Reservoir Storage for Streamflow Augmentation.** Section 102(b) of the 1972 amendments (33 U.S.C. 1252) provided that in the planning of any Corps reservoir, consideration shall be given to inclusion of storage for regulation of streamflow. Such storage is not to be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

**State Water Quality Certification.** Section 401 of the 1972 amendments (33 U.S.C. 1341) requires certification from the State or interstate water control agencies that a proposed water resources project is in compliance with established effluent limitations and water quality standards. Corps projects, as well as applicants for Federal permits or licenses are required to obtain this certification.

**National Pollution Discharge Elimination System(NPDES).** Section 402 of the 1972 amendments (33 U.S.C. 1342) establishes conditions and permitting for discharges of pollutants under the National Pollution Discharge Elimination System(NPDES), and replaces the Corps Refuse Act Permit Program under the Act of 1899 without repealing the Act.

Ocean Discharges. Section 403 of the 1972 amendments (33 U.S.C. 1343) addresses criteria and permits for discharges into the territorial seas, the contiguous zone, and the oceans.

Permits for Dredged or Fill Material. Section 404 (33 U.S.C. 1344) authorizes a separate permit program for the disposal of dredged or fill material in the Nation's waters, to be administered by the Secretary of the Army, acting through the Chief of Engineers. Under Section 404 of the amended Act, the Corps of Engineers retains primary responsibility for permits to discharge dredged or fill material into waters of the United States. The Act also defines the conditions which must be met by Federal projects before they may make discharges into the Nation's waters. Under the program, permits are to be issued, after notice and opportunity for public hearings for disposal of such material at specified sites. Sites are to be selected in compliance with guidelines developed by EPA in conjunction with the Secretary of the Army. EPA is authorized to forbid or restrict the use of specified areas whenever it determines that disposal of material at a specific site would have an unacceptable adverse effect on municipal water supplies, shellfish, and fishery areas, or recreational activities.

**RESOURCES COVERED:** Waters of the United States, but does not include groundwater; Pollutants discharged into the waters of the U.S. and water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation.

Jurisdiction under Section 404: Traditionally navigable waters; all interstate waters, including interstate wetlands, all other waters including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce; all impoundments of water that fit these definitions; territorial seas; and wetlands adjacent to waters, other than adjacent to other wetlands (33 C.F.R. 328.3). Although some of these definitions were phased in over a period of years, the current regulations provide for the Clean Water Act's jurisdiction over all of the above mentioned waters. Regulatory jurisdiction over isolated waters depends on the Corps finding that the degradation of those waters would impact interstate commerce.

**COMPLIANCE REQUIREMENTS:** Reservoir Storage for Streamflow Augmentation. In the planning of any Corps reservoir, consideration shall be given to inclusion of storage for regulation of streamflow. Such storage is not to be provided as a substitute for adequate treatment or other methods of controlling waste at the source. The need for, value of, and the impact of storage for the purpose of water quality control are determined by the Administrator of the Environmental Protection Agency (EPA). The need for and value of storage for regulation of streamflow for other purposes are to be determined by the Corps. The costs of storage are to be non-reimbursable if the benefits are widespread or National in scope.

State Water Quality Certification. Section 401 of the CWA requires that the Corps obtain certification from the State or interstate water control agencies that a proposed water resources project is in compliance with established effluent limitations and water quality standards. If the State in question has assumed responsibilities for the 404 regulatory program, a State 404 permit would be obtained which would serve as the certification of compliance. Section 404(r) waives the requirement to obtain the State Water Quality certificate if the information on the effects of the discharge are included in an EIS on the proposed project submitted to Congress before the discharge takes place and prior to either authorization of the project or appropriation of construction funds. It is the general policy of the Corps to seek State water quality certification rather than utilizing the Section 404(r) exemption (ER 1105-2-100). Applicants for Corps permits must obtain certification from the State for activities involving discharges.

Civil Works Projects. Corps projects involving the discharge of dredged or fill material into the waters of the United States, shall be developed in accordance with guidelines promulgated by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army under the authority of Section 404(b)(1) of the CWA (40 C.F.R. 230) unless the activity is exempt under Section 404(f). Procedures for the evaluation of potential contaminant-related impacts associated with the discharge of dredged material, as required by the Section 404(b) (1) Guidelines are contained in the "Evaluation of Dredged Material Proposed for Discharge in the Waters of the U.S. - Testing Manual " commonly referred to as the Inland Testing Manual which was jointly developed by the EPA and the Corps. The investigations and analysis required by the Section 404(b)(1) Guidelines shall be included in feasibility reports. (ER 1105-2-100)

Dredged Material Testing. Dredged material and sediments beneath the navigable waters proposed for dredging shall be tested and evaluated for their suitability for disposal in accordance with the appropriate guidelines and criteria adopted pursuant to Section 404 of the Clean Water Act and/or Section 103 of the Marine Protection Research and Sanctuaries Act (MPRSA) and supplemented by the Corps of Engineers Management Strategy for Disposal of Dredged Material: Containment Testing and Controls (or its appropriate updated version) as cited in Title 33 C.F.R. Section 336.1.

National Pollution Discharge Elimination System (NPDES) Storm Water Discharge Permit Requirements. Point source discharge of pollutants into "navigable water" is regulated through the NPDES. All point source discharges must have an NPDES permit (33 U.S.C. 1311). All Corps facilities and activities that meet the definition of an "industrial activity" under 40 C.F.R. 122.26 are subject to the requirement to obtain storm water permits. One Corps activity covered by the storm water rule is any construction activity that disturbs five acres or more of land. Storm water permits are issued by the states if they have an authorized NPDES storm water permit program or by the EPA for areas not covered by an authorized state program. Activities regulated under Section 404 of the CWA do not require permits under the NPDES program.

Reservoir Management and Water Control. ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects (31 May 1995), establishes a policy for water quality management program at Corps Civil Works Projects. The guidance requires development of water quality management objectives and operational procedures for each water control project in order to ensure that water quality is suitable for authorized project purposes, existing water uses, and public health and safety and is in compliance with applicable Federal water quality criteria and state standards. It discusses the development and implementation of water quality data collection programs in order to understand and manage the environmental resources of the Corps' water control projects effectively. Consideration is given to both upstream activities and downstream water quality and ecological conditions. (See Management Opportunities).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Depending on the provisions: Army Corps of Engineers; Environmental Protection Agency; National Marine Fisheries Service; Fish and Wildlife Service; State and Local agencies; Applicants; the Public.

**Process:** Depending on the provisions: NPDES Permitting Process; Section 401 Water Quality Certification; Section 404 Permitting Process

**Product:** Depending on the provisions: NPDES Permits; State Water Quality Certificates; Individual, general, or nationwide permits may be issued under the Section 404 program depending upon the type and scope of activity involved.

**Timing/Schedule:** NPDES applications in response to Section 402 requirements, must be submitted at least 180 days prior to the date the discharge is expected to commence or the current permit is due to expire (40 C.F.R. 122.21). When an application for a regulated activity in waters of the United States is submitted under Section 404 requirements, the Corps will review the application for completeness. Within 15 days of receipt of a complete application the Corps will issue a public notice (if required) soliciting comments or notify the applicant that additional information is needed. All comments will be considered and a decision to issue or deny the application will be made. The length of time between receipt of a complete application and decision to issue or deny the permit varies depending upon the type of permit issued. (See 33 C.F.R. 325)

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.; CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects; ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ER 1130-2-307 Dredging Policies and Practices; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222.

**Civil Works Construction:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** 33 C.F.R. 320-330; 33 C.F.R. 330 updated November 22, 1991; The Corps supplements its Regulatory regulations with Regulatory Guidance Letters (RGL's) that provide guidance to districts on specific issues. RGLs are published annually in the Federal Register. Also, 33 CFR 331, the Administrative Appeal Process, which was added to the Code of Federal Regulations on March 9, 1999 and updated on March 28, 2000. Also, CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

ALSO: CECC-E Memorandum NPDES Storm Water Discharge Permit Requirements, 23 June 1992; CECC-E Memorandum NPDES Storm Water Discharge Permit Requirements, 21 January 1993.

**FOR MORE INFORMATION SEE:** Marine Protection Research and Sanctuaries Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 40 C.F.R. 230, Interim Regulations on Discharge of Dredged or Fill Material into Navigable Waters. Section 404 (B)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

**MANAGEMENT OPPORTUNITIES:** There are numerous opportunities to contribute to the goals of the Act within the Civil Works program. The water quality management programs carried out as part of water control management provide both information about water quality and ecological conditions as well as restoration implementation opportunities associated with Corps reservoir and lock and dam projects. Some of these opportunities can be implemented as part of either day-to-day operations, or special operations. Others may be implemented through the Section 1135 program, examined as part of Section 216 studies, or pursued in conjunction with major rehabilitation studies or specifically authorized studies.

# COASTAL BARRIER RESOURCES ACT

**LEGISLATIVE TITLE:** Coastal Barrier Resources Act of 1982

**UNITED STATES CODE CITATION:** 16 U.S.C. § 3501 et seq; 12 U.S.C. § 1441 et seq

**OTHER TITLES AND POPULAR NAMES:** Coastal Barrier Resources Act; CBRA; Coastal Barrier Improvement Act of 1990, CBIA. Coastal Barrier Resources Reauthorization Act of 2000

**SUMMARY:** This Act established a policy that coastal barriers, in certain geographic areas of the U.S., and their adjacent inlets, waterways and wetlands resources are to be protected by restricting Federal expenditures which have the effect of encouraging development of coastal barriers. The Act provides for a Coastal Barrier Resources System (CBRS) which identifies undeveloped coastal barriers along the Atlantic and Gulf Coasts, including islands, spits, tombolos, and bay barriers that are subject to wind, waves, and tides such as estuaries and nearshore waters (the extent of which is defined by a set of maps approved by Congress dated 30 September 1982). Except for specific exempted projects (e.g. dredging, Federal navigation projects, some habitat management and enhancement efforts), no new Federal expenditures or financial assistance are allowed for areas within the system. The purpose is to minimize loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with the development of coastal barriers. The 1990 reauthorization, Coastal Barrier Improvement Act (16 U.S.C. 3501 et seq) provides for the technical revision of maps, modification of boundaries, and additions to the CBRS. A similar resource inventory is to be created for coastal barrier resources of the U.S. Pacific Coast under the Pacific Coast Barrier Resources Study and Mapping. A Coastal Barriers Task Force is created to report on the management of coastal barrier resources.

Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains a broad exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems; exemptions also include maintenance or construction of improvements to existing Federal navigational channels and related structures (e.g. jetties), including the disposal of dredge materials related to maintenance and construction. Care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of the CBRA. Specific activities undertaken by the Corps under the rationale of a CBRA-exemption must be evaluated to ensure that they comply with the limitations described within CBRA.

A 1999 amendment redesignated the Coastal Barrier Resources System as the “John H. Chaffee Coastal Barrier Resources System.” (16 U.S.C. 3501)

The 2000 reauthorization (16 U.S.C. 3501) 1) revises the guidelines for determining whether a coastal barrier is undeveloped, 2) provides for voluntary additions to the John H. Chaffee Coastal Barrier Resources System, 3) authorizes a digital mapping pilot project, and 4) calls for an economic assessment of the System, including the impact of the System on Federal expenditures, particularly impacts resulting from the avoidance of Federal expenditures for disaster relief, the national flood insurance program, and development assistance for roads, potable water supplies, and wastewater infrastructure.

**RESOURCES COVERED:** Undeveloped and underdeveloped U.S. coastal barriers, bay barriers, barrier islands, and sediment features that protect the mainland and associated fish, wildlife, and other natural resources.

**COMPLIANCE REQUIREMENTS:** For activities within the Coastal Barrier Resources System, Corps must document that they are in compliance with this Act. Documentation must be reviewed by the Secretary of the Interior.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** The Secretary of the Interior must review reports for compliance with the Act.

**Process:** Reports must be sent to the Secretary for review.

**Product:** Technical revision, modification of Coastal Barrier Resources System; Pacific Coast Barrier Protection Study and Maps; Report to Congress regarding Coastal Barrier Management.

**Timing/Schedule:** None specified

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 220-230

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Commerce, States

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 13 C.F.R. 116.40

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to coordinate with the FWS and state resource agencies on projects and activities within the CBRA units such as ecosystem restoration, shoreline stabilization, and beach nourishment and other activities where dredged material may be used beneficially. Additionally, the Corps can offer design and construction assistance to the FWS for fish and wildlife protection and enhancement features in non-Corps related CBRA units.

# COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION ACT

**LEGISLATIVE TITLE:** Coastal Wetlands Planning, Protection and Restoration Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 3951 to 3955

**OTHER TITLES AND POPULAR NAMES:** Breaux-Johnston Act; Breaux Bill; Title III of PL 101-646, "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990"

**SUMMARY:** Sections 303 (16 U.S.C. 3952) and 304 (16 U.S.C. 3953) direct a Task Force chaired by the Secretary of Army to identify a list of coastal wetland restoration projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands. The quality of such wetlands, and provisions for small-scale projects to demonstrate the use of new techniques or materials for coastal wetlands restoration will also be taken into account (16 U.S.C. 3952). The task force is also to develop a plan for a comprehensive approach to restore and prevent loss of wetlands in Louisiana. Section 305 (16 U.S.C. 3954) directs the Director of the U.S. Fish and Wildlife Services to make matching grants to any coastal State to carry out cost-shared coastal wetlands conservation projects. Funding of this program has been extended to 2009 (16 U.S.C. 699).

**RESOURCES COVERED:** Wetlands; fish and wildlife

**COMPLIANCE REQUIREMENTS:** None specified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Department of the Army, the Department of Interior, Department of Agriculture, Department of Commerce, the Environmental Protection Agency, and the Governor of Louisiana jointly develop annual priority project lists and the restoration plan. The Department of the Army, the Director of the FWS, the Administrator of the EPA and the Governor of Louisiana develop the Louisiana Coastal Wetlands Conservation Plan.

**Process:** Task force agencies work together on a continuing basis to identify, develop, plan, and implement coastal restoration projects.

**Product:** Annual priority project lists; a Louisiana Coastal Wetlands Restoration Plan, and a Louisiana Coastal Wetlands Conservation Plan.

**Timing/Schedule:** Priority project lists are submitted annually. The Louisiana Coastal Wetlands Restoration Plan was completed in 1994. The Louisiana Coastal Wetlands Conservation Plan is under development.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to contribute to the goals of this Act through ecosystem restoration initiatives (e.g., Section 1135, Section 204, Section 206 and General Investigation Studies) as well as through other Civil Works programs and activities such as through the authority provided by Section 22, "Planning Assistance to States", when the primary purpose is to complement comprehensive State planning for effective management of its coastal zone. Available data or other information collected in the course of ongoing research, surveys, studies or regulatory activities can be provided the states.

# COASTAL ZONE MANAGEMENT ACT

**LEGISLATIVE TITLE:** Coastal Zone Management Act of 1972

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1451-1464

**OTHER TITLES AND POPULAR NAMES:** CZMA; Coastal Zone Act Reauthorization Amendments of 1990 (CZARA); Coastal Zone Management Act Amendments of 1976; Coastal Zone Management Improvement Act of 1980; Coastal Zone Management Reauthorization Act of 1985

**SUMMARY:** The Act (as amended) establishes a policy: 1) to preserve, protect, develop and where possible, restore and enhance the resources of the Nation's coastal zone for current and future generations; and, 2) to encourage and assist states in their responsibilities in the coastal zone through development and implementation management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values, as well as the needs for compatible economic development (16 U.S.C. 1452).

Guidelines are set forth to develop a program for the management, beneficial use, protection and development of the land and water resources of the Nation's coastal zones through protection of natural resources, management of development, providing public access, and establishment of pollution control. It delegates responsibility to coastal states to exercise their responsibilities as owners of coastal zone areas to develop and implement management programs to achieve wise use of the land and water resources. [More specific details on the state programs are provided at the end of this summary.] Participation and cooperation is encouraged among state and local governments, interstate regional agencies and Federal agencies to help states manage competing demands in coastal areas. The Secretary of Commerce is authorized to award Federal grants to assist the states in developing and administering management programs for land and water use in the coastal zone giving full consideration to ecological, cultural, historic and esthetic values as well as to the need for economic development.

The 1980 amendments provided for the development of special area management plans (SAMPs) for areas of the coastal zone considered to be of particular importance. SAMPs are comprehensive plans that provide for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation of the designated geographic areas (16 U.S.C. 1453(17)). They are also intended to provide for increased specificity in improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decision making (16 U.S.C. 1452(3)).

Section 307 (16 U.S.C. 1456(c)(1)(A)) directs Federal agencies proposing activities or development projects including Civil Works activities, whether within or outside of the coastal zone, that are reasonably likely to affect any land or water use or natural resource of the coastal zone, to assure that those activities or projects are consistent, to the maximum extent practicable, with the approved state programs. Non-Federal projects requiring a Federal permit for an activity in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of the state, must provide certification to the permitting agency that the proposed activities complies with the enforceable policies of the states approved program.

No License or permit shall be granted by a Federal agency until the state has concurred with the applicants certification or until the state has waived its right to do so (16 U.S.C. 1456 (c)(3)(A)).

The Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 authorized NOAA to undertake a Coastal Nonpoint Pollution Control Program. State and local authorities are to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters (16 U.S.C. 1455(b)).

State management programs are to provide for: (A) the protection of natural resources, including wetlands, flood plains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone; (B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands; (C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters; (D) priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists; (E) public access to the coasts for recreation purposes; (F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features; (G) the coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources; continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies; (I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decision making; (J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies; and, (K) the study and development, where appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise. (16 U.S.C. 1452 (2)).

**RESOURCES COVERED:** All coastal zone areas (described as the coastal waters, and lands therein and thereunder, and the adjacent shorelines strongly influenced by each other and in proximity to shorelines of the several coastal states) including islands, transitional and intertidal areas, salt marshes, wetlands, beaches, estuaries, bays, ponds, lagoons bayous, dunes, barrier islands, reefs, or fish and wildlife habitat. (16 U.S.C. 1453)

**COMPLIANCE REQUIREMENTS:** If a state has an approved coastal zone management program through the Office of Coastal Zone Management (NOAA), Federal agencies with development projects within the coastal zone, including Civil Work activities, must assure that those activities or projects are consistent to the maximum extent practicable, with the approved state program. Non-Federal applicants proposing activities affecting land or water uses in the coastal zone are required to furnish certification that the activity is in compliance with the approved state coastal zone management plan. Generally, no permit will be issued until the state has concurred with the non-Federal applicant's certification, unless the State has waived its right to do so.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Commerce through its Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), States

**Process:** State management plans should be reviewed by the Corps to determine whether Civil Works projects or activities will impact coastal zone resources.

**Product:** Documentation of a "determination of consistency" with the state coastal zone management program to the appropriate State agency (16 U.S.C 1456).

**Timing/Schedule:** State must be notified at least 90 days before final approval of project. State has 45 days to respond to Federal notification. If final response has not been issued within 45 days from State receipt of the notification, the Federal Agency may presume State consistency. State may be given a 15 day extension to the 45 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** 33 C.F.R. Parts 209, 335, 336, 337, 338

**Regulatory:** 33 C.F.R. 220-230; 33 C.F.R. 320, 325, 330 (Updated November 29, 1991); Regulatory Guidance Letter 86-10, Special Area Management Plans (SAMPs).

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Oceanic and Atmospheric Administration (NOAA)

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 15 C.F.R. 923, Coastal Zone Management Program Development and Approval Regulations; 15 C.F.R. 930 Subpart D, NOAA Regulations of Federal Consistency; 15 C.F.R. 933, Coastal Zone Management Research and Technical Assistance.

## **MANAGEMENT OPPORTUNITIES**

The Secretary of Commerce administers the program and provides grants to states for coastal resource improvement programs. The funds can in turn be cost shared as part of a coastal state's share of costs required under any other Federal program that is consistent with the purpose of this Act. Improvement opportunities may include:

- a. The preservation or restoration of specific coastal areas of the state because of their conservational, recreational, ecological, or aesthetic values.
- b. The redevelopment of deteriorating and under-utilized urban waterfronts and ports.
- c. Provide access to public beaches and to other public coastal areas and coastal waters.

Corps opportunities exist by partnering with State Coastal Zone Management Offices in providing technical, design, and construction assistance with the improvement projects. Corps participation in the development of SAMPs, ecosystem restoration projects, watershed and other comprehensive studies may contribute to state coastal zone management plan objectives.

The Coastal Nonpoint Pollution Control Program may provide data and other information useful to Corps planning studies and management activities.

## COASTAL ZONE PROTECTION ACT

**LEGISLATIVE TITLE:** Coastal Zone Protection Act of 1996

**UNITED STATES CODE CITATION:** 16 U.S.C. 1451 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act reauthorizes the Coastal Zone Management Act of 1972. It includes provisions which amend authorities pertaining to financial assistance for development of state coastal programs (16 U.S.C. 1454(a)), implementation assistance for coastal zone enhancement (16 U.S.C. 1456b(b)), authorization of appropriations for grants (16 U.S.C. 1464), the Coastal Zone Management Fund (16 U.S.C. 1456a(b)(2)(A)), aquaculture in the coastal zone, and appeals to the Secretary (16 U.S.C. 1465).

**RESOURCES COVERED:** See Coastal Zone Management Act.

**COMPLIANCE REQUIREMENTS:** See Coastal Zone Management Act

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Commerce through its Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), States.

**Process:** State management plans should be reviewed by the Corps to determine whether Civil Works projects or activities will impact coastal zone resources.

**Product:** Documentation of a “determination of consistency” with the state coastal zone management program to the appropriate State agency (16 U.S.C 1456).

**Timing/Schedule:** State must be notified at least 90 days before final approval of project. State has 45 days to respond to Federal notification. If final response has not been issued within 45 days from State receipt of the notification, the Federal Agency may presume State consistency. State may be given a 15 day extension to the 45 days.

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute; See Coastal Zone Management Act

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute; See Coastal Zone Management Act

**Regulatory:** None specific to this statute; See Coastal Zone Management Act

**FOR MORE INFORMATION SEE:** Coastal Zone Management Act.

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** National Oceanic and Atmospheric Administration (NOAA)

**Guidance Title:** See Coastal Zone Management Act.

**Code of Federal Regulations Citation:** See Coastal Zone Management Act.

**MANAGEMENT OPPORTUNITIES:** See Coastal Zone Management Act.

## COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT

**LEGISLATIVE TITLE:** Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), amended by Superfund Amendments and Reauthorization Act of 1986 (SARA)

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 9601 - 9675

**OTHER TITLES AND POPULAR NAMES:** CERCLA; Superfund; SARA.

**SUMMARY:** CERCLA (PL 96-510), as amended by SARA of 1986 (PL 99-499), provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and cleanup of inactive hazardous substances disposal sites. CERCLA also established a fund which is financed by hazardous waste generators and is used to financially support cleanup and response actions of abandoned hazardous waste sites when no financially responsible party(ies) can be found. Parties responsible for the contamination of sites are liable for all costs incurred in the cleanup and remediation process. The Environmental Protection Agency (EPA) has a hazard ranking system for assessing sites. The most severely contaminated sites are placed on the National Priorities List (NPL). Although Federal agency hazardous wastes sites may be placed on the NPL, no Federal facilities are eligible to receive financial assistance from the Superfund program. Civil Works projects are not eligible for Defense Environmental Restoration Program (DERP) funding.

**RESOURCES COVERED:** Sites contaminated with hazardous substances. The definition for hazardous substances is found at 42 U.S.C. 9601(14) and includes substances regulated under the Clean Water Act (33 U.S.C. 1317), the Resource Conservation and Recovery Act (42 U.S.C. 6921), the Clean Air Act (42 U.S.C. 7412), and the Toxic Substances Control Act (15 U.S.C. 2606). A list of hazardous substances is provided in 40 C.F.R. 302 and 40 C.F.R. 355. CERCLA does not cover petroleum contamination, unless the petroleum has been mixed with hazardous wastes, or a hazardous substance was added to the petroleum after the refining process, as an additive. Oil spills are covered under the Clean Water Act. Contaminated dredged material and sediments beneath navigable waters proposed for dredging may qualify as a hazardous substance unless the materials are designated as part of a Federal permitted release.

**COMPLIANCE REQUIREMENTS:** 42 U.S.C. 9620 provides that Federal facilities and agencies must comply with the substantive and procedural requirements of CERCLA, including liability under 9607. As Federal facilities, Civil Works projects must comply with CERCLA. The remediation requirements can be found in 40 C.F.R. 300. In addition, Federal real property which is transferred by Federal agencies by contract for sale or other transfer must, pursuant to 9620(h), include a contract notice of the type, quantity and time for which any hazardous substance was stored, release, or disposed on the property in accordance with 40 C.F.R. 373, and must place covenants in the deed which warrant that all remedial actions necessary to protect human health and the environment have been taken. Spills must be reported in accordance with the requirements set forth in 40 C.F.R. 302 and 355.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency, State Environmental Agencies, Other Federal agencies, the public.

**Process:** Typically CERCLA is triggered by (1) the release or substantial threat of a release of a hazardous substance into the environment; or (2) the release or substantial threat of a release of

any pollutant or contaminant into the environment which presents an imminent threat to the public health and welfare. In practical terms, the CERCLA investigation and remediation process may be triggered when a Civil Works project is added to the Federal Agency Hazardous Waste Compliance Docket (the Docket) or when there is a release or substantial threat of a release of a hazardous substance into the environment or when the release or substantial threat of a release of any pollutant or contaminant into the environment which presents an imminent threat to the public health and welfare. The remediation process itself can be found in 40 C.F.R. 300, the National Contingency Plan. The spill reporting requirements are found in 40 C.F.R. 302 and 355.

\* Due to the complexity and often times large financial concerns associated with RCRA issues, your Office of Counsel should be consulted regarding liability and compliance with RCRA. Also, given their experience with Formerly Used Defense Sites (FUDS), Base Realignment and Closure (BRAC), and Installation Restoration (IR), the Center For Expertise in Hazardous, Toxic and Radioactive Waste should be consulted regarding legal and technical matters.

**Product:** When a spill of a reportable quantity occurs, spill notification to the National Response Center is required. Spills may also be required to be reported under other laws to other Federal or state agencies. For projects listed on the Docket, a Preliminary Assessment and possibly a Site Inspection may be performed. For sites on the National Priorities List (NPL) a Remedial Investigation/Feasibility Study will be performed. For removal actions, an Engineering Evaluation/Cost Analysis (EE/CA) may be performed.

**Timing/Schedule:** Spills requiring notification must be reported to the National Response Center (NRC) immediately. Emergency response procedures should be immediately undertaken. For remediations, removal actions are short term response actions typically characterized by the limits of \$2 million dollars and 12 months. Remedial actions are longer term remediations (6-8 years).

## **CORPS GUIDANCE**

DODD 5030.41, Oil and Hazardous Substance Pollution Prevention and Contingency Program (26 Sep 78)

AR 200-1, Environmental Protection and Enhancement

AR 200-2, Environmental Effects of Army Actions ;

ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects

ER 385-1-92, Safety and Occupational Health Document Requirements for Hazardous, Toxic and Radioactive Waste (HTRW) and Ordnance and Explosive Waste (OEW) Activities

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; EP 1165-2-1, Water Resources Policies and Authorities; Real Estate Policy Letter 4 dated 13 September 1991 and amended 8 May 1992.

**Civil Works Engineering:** ER 1110-1-263, Chemical Data Quality Management for Hazardous Waste Remedial Activities; ETL 1110-1-154, HTRW Guide Scopes of Work. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** EP 200-1-2, Process and Procedures for RCRA Manifesting

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** USACE Operated Facilities Environmental Compliance Guidance Letter, Spill Planning and Response Requirements; Executive Order 12580, Superfund Implementation; Executive Order 12088, Federal Compliance with Pollution Control Standards

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** The majority of guidance is prepared by the Environmental Protection Agency.

**Guidance Title:** See below

**Code of Federal Regulations Citation:** There are many guidance documents pertaining to spill notification procedures, spill response and remediation. You may contact NTIS or the Environmental Protection Agency RCRA/CERCLA hotline (800-424-9346) in Washington, DC to inquire as to the availability of additional guidance documents. The following is a list of just a few of the more useful documents:

40 C.F.R. 300 The National Oil and Hazardous Substance Contingency Plan

40 C.F.R. Part 302 Designation, Reportable Quantities, and Notification

40 C.F.R. Part 355 Emergency Planning and Notification

40 C.F.R. Part 373 Reporting Hazardous Substance Activity when selling or transferring Federal Real Property

**MANAGEMENT OPPORTUNITIES:** The purchasing of contaminated properties should be avoided whenever possible. Construction of Civil Works projects on contaminated properties should also be avoided whenever possible. This can be accomplished by early identification of potential problems in the reconnaissance, feasibility, and PED phases before any land acquisition begins. The plan for, and execution of, each Civil Works project will routinely include a phased and documented review to provide for early identification of HTRW problems at Civil Works projects. In addition, spills of reportable quantities of hazardous substances must be reported in accordance with 40 C.F.R. 302 and 40 C.F.R. 355.

# CONSERVATION PROGRAMS ON MILITARY RESERVATIONS

**LEGISLATIVE TITLE:** Conservation Programs on Government Lands

**UNITED STATES CODE CITATION:** 16 U.S.C. § 670a-670f

**OTHER TITLES AND POPULAR NAMES:** Sikes Act; Fish and Wildlife Conservation on Military Reservations; Subchapter I: Conservation Programs on Military Reservations

**SUMMARY:** The Act authorizes the Secretary of Defense to carry out a program of planning, development, maintenance and coordination of wildlife, fish and game conservation and rehabilitation on military lands, in coordination with the Secretary of Interior, appropriate state agencies. Cooperative plans shall provide for 1) fish and wildlife habitat improvements or modifications, 2) range rehabilitation where necessary for support of wildlife, 3) control of off-road vehicle traffic, and 4) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered (16 U.S.C. 670(a)). The Act also authorizes programs for the development, enhancement, operation and maintenance of public outdoor recreation resources at military reservations, in coordination with the previously mentioned agencies (16 U.S.C. 670(c)). In addition, the Act promotes the conservation, restoration and management of migratory game birds on military reservations (16 U.S.C. 670(b)). While this Act specifically excludes the Corps of Engineers, Corps districts providing support to military installations may be able to provide assistance to installation natural resource managers in developing these plans.

**RESOURCES COVERED:** Fish and wildlife resources and habitat.

**COMPLIANCE REQUIREMENTS:** None identified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Fish and Wildlife Service, state resource agencies

**Process and Product:** Development of joint-Federal and State natural resources plans for military reservations.

**Timing/Schedule:** Plans are developed based on Federal-State coordinated schedules.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 32 C.F.R. 190: Office of the Secretary of Defense, National Resources Management Plan; 43 C.F.R. 8000 Bureau of Land Management, Department of Interior, Recreation Programs; 43 C.F.R. 8300 Bureau of Land Management, Department of Interior, Procedures; 43 C.F.R. 8370, Bureau of Land Management, Department of Interior, Use Authorizations.

**MANAGEMENT OPPORTUNITIES:** Corps districts providing assistance to military installations may be able to assist the installation natural resource managers in developing the plans authorized by this Act.

## DEEPWATER PORT ACT OF 1974

**LEGISLATIVE TITLE:** Deepwater Port Act of 1974

**UNITED STATES CODE CITATION:** 33 U.S.C. § 1501-1524

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** This Act provides authority for Secretary of Transportation to issue a license for the ownership, construction and operation of a deepwater port (33 U.S.C. 1503). “Deepwater port” means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and of the coast if the United States, and intended for the loading or unloading and further handling of oil for transportation, except as excluded in 33 U.S.C. 1522. Included are all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar apertances to the extent they are located seaward of the highwater mark. (33 U.S.C. 1502). The Act provides for licenses to be issued if applicants meet the required criteria, including the demonstration that the project will be constructed with the best technology to minimize adverse impacts on the marine environment and compliance with the Clean Water Act, Federal Water Pollution Control Act, Coastal Zone Management Act, and Marine Protection, Research and Sanctuaries Act. The license applications will be coordinated with Federal Agencies and departments with jurisdiction (33 U.S.C. 1504(e)).

**RESOURCES COVERED:** Coastal zone; Coastal environment - transitional and intertidal areas - bays, lagoons, salt marshes, estuaries, beaches; and fish and wildlife resources; water, air.

**COMPLIANCE REQUIREMENTS:** The Act prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. Authorization for a deepwater port requires that applications for Section 10, 404 and 103 permits be issued by the Corps if appropriate.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Transportation in consultation with other agencies and departments.

**Process:** Outlined in 33 U.S.C. 1504.

**Product:** Licenses for the construction and ownership of deepwater ports.

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Transportation

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 33 C.F.R. 62, 64, 66, 67, 70, 137, 140, 142-146, 148-150, 320; 40 C.F.R. 110; 46 C.F.R. 2, 4, 50, 54, 56, 58, 61, 108-110, 170, 173, 174, 197; 49 C.F.R. 146

**MANAGEMENT OPPORTUNITIES:** The Corps is encouraged to coordinate closely with the Department of Transportation during early stages of planning and siting deep water ports.

## EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986 AND THE POLLUTION PREVENTION ACT OF 1990

**LEGISLATIVE TITLE:** The Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 11001 - 11050, and 42 U.S.C. §§ 13101 TO 13109

**OTHER TITLES AND POPULAR NAMES:** SARA Title III, EPCRA and PPA

**SUMMARY:** This Act, also known as SARA Title III, was designated to promote emergency planning and preparedness at both the state and local level. It provides citizens, local governments, and local response authorities with information regarding the potential hazards in their community. EPCRA requires use of emergency planning and designates state and local governments as recipients for information regarding certain chemicals used in the community.

The Pollution Prevention Act of 1990 (PPA) was enacted to prevent or reduce pollution at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally sound manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and conducted in an environmentally safe manner.

The PPA required owners or operators of facilities required to file an annual toxic chemical release form under EPCRA Section 313 to also include with each annual filing a toxic source reduction and recycling report for the preceding calendar year. Not only did EO 12856 require Federal Agencies to comply with the provisions of EPCRA and file Toxic Release Inventory (TRI) reports for those chemicals exceeding the threshold, it also requires Federal facilities to prepare pollution prevention plans.

**RESOURCES COVERED:** Hazardous substances, hazardous chemicals, extremely hazardous substances, and toxic chemicals.

**COMPLIANCE REQUIREMENTS:** The key compliance requirements are: emergency planning, Right-To-Know requirements, reporting requirements, and notification requirements.

**Emergency Planning:** Facilities with extremely hazardous substances in amounts equal to or greater than the amounts shown in 40 C.F.R. 355 are required to notify the state emergency response commission (SERC) and designate a representative to participate in the local emergency planning committee (LEPC).

**Right-To-Know Requirements:** Facilities are required to prepare or have available a MSDS for hazardous chemicals and are required to submit the MSDSs to the emergency commission and the fire department with jurisdiction over the facility for each hazardous chemical present at the facility according to varying threshold amounts.

**Reporting:** Section 312 of EPCRA requires facilities to submit annual Emergency and Hazardous Chemical Inventory forms (Tier I and II forms) to the state emergency response commission (SERC), the local emergency planning committee (LEPC), and the fire department having jurisdiction over the facility for the chemicals manufactured, processed or otherwise used in quantities exceeding established minimum threshold values. EO 12856 requires Federal facilities to comply regardless of the facility's SIC code.

Notification: Section 304 of EPCRA establishes spill reporting requirements for facilities that release any extremely hazardous substance listed in 40 C.F.R. 355 or the release of a reportable quantity of a hazardous substance (40 C.F.R. 302).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency and State Emergency Response Commissions, Local Emergency Planning Committees, and the local community.

**Process:** Facilities must first perform an internal evaluation to determine what types of chemicals are onsite and the amount stored or used onsite. Facilities may then have to provide appropriate notifications to the LEPC, SERC and fire departments pending the internal evaluation. Facilities may have to file Tier I/II reports. As a result of EO 12856, Federal agencies are required to develop a Pollution Prevention Plan and program.

**Product:** Pollution Prevention Plan and associated program. Tier I/II reports as appropriate.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

AR 200-1, Environmental Protection and Enhancement

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** The Environmental Protection Agency, State Emergency Response Commissions, Local Emergency Planning Committees

**Guidance Title:** Guidance for Implementing E.O. 12856: Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements - March 28, 1995 (EPA 300-B-95-005, April 1995); E.O. 12856, Questions and Answers, March 1995 (EPA 745-R-95-011)

**Code of Federal Regulations:** 40 C.F.R. 355 Emergency planning and notification; 40 C.F.R. 370 Hazardous chemical reporting: Community right-to-know; 40 C.F.R. 372 Toxic chemical release reporting: Community right-to-know; EO 12856, Federal Compliance with Right-To-Know laws and Pollution Prevention Requirements; EO 12088, Federal Compliance with Pollution Standards

**MANAGEMENT OPPORTUNITIES:** Corps Civil Works facilities must be assessed to determine necessary reporting requirements. Also, coordination with the LEPC and SERC may be necessary. Pollution Prevention Plans and programs should be developed.

## EMERGENCY WETLANDS RESOURCES ACT

**LEGISLATIVE TITLE:** Emergency Wetlands Resources Act of 1986

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 3901-3932

**OTHER TITLES AND POPULAR NAMES:** None Identified.

**SUMMARY:** The purpose of this Act is to promote the conservation of wetlands in order to maintain the public benefits they provide, and to fulfill international obligations contained in various migratory bird treaties and conventions (16 U.S.C. 3901 (b)). The means for this identified in the Act include: cooperative management and conservation efforts among private interests, local, state and Federal governments; and acquisition in fee, easements or other interests and methods. Under the Act, the U.S. Fish and Wildlife Service has developed a National Wetlands Priority Conservation Plan (16 U.S.C. 3921) to identify the locations and types of wetlands that should be priorities for state and Federal acquisition through the Land and Water Conservation Fund. The Act requires that each state consider wetlands as an important outdoor resource in preparing State Comprehensive Outdoor Recreation Plans (SCORPs) required under the Land and Water Conservation Fund Act (16 C.F.R. 4601-8). The Act also requires continuation of the National Wetland Inventory project to complete preparation of wetland maps for all the contiguous states by 1998 (16 U.S.C. 3931). The Act also requires the Department of Interior to report to Congress on the status, condition, and trends of wetlands and the effects of Federal programs on wetlands in certain regions of the United States.

**RESOURCES COVERED:** Wetlands; migratory waterfowl; fish; spawning, nesting, migration, wintering and breeding habitat essential to the survival of migratory and resident fish and wildlife.

**COMPLIANCE REQUIREMENTS:** None identified for Corps.

### REVIEW AND CONSULTATION REQUIREMENTS:

**Who Reviews and Consults:** Department of Interior(U.S. Fish and Wildlife Service); Department of Commerce (National Marine Fisheries Service); Environmental Protection Agency; States

**Process:** None specified

**Product:** Regional Wetland Concept Plans are developed by regional FWS offices, using information from the wetland components of State Comprehensive Outdoor Recreation Plans (SCORPs), required by the Land and Water Conservation Fund Act.

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Land and Water Conservation Fund Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES:**

**Agency:** US Fish & Wildlife Service

**Guidance Title:** National Wildlife Refuge System Administrative Provisions

**Code of Federal Regulations Citation:** 50 C.F.R. Part 25

**MANAGEMENT OPPORTUNITIES:** Regional offices of the USFWS develop Regional Wetland Concept Plans, with lists of priority wetland sites. While these lists may focus primarily on sites for acquisition, the plans themselves may be useful in identifying significant opportunities for ecosystem restoration. Maps and other information from the National Wetlands inventory may be useful in Civil Works planning and natural resources management initiatives.

## ENDANGERED SPECIES ACT

**LEGISLATIVE TITLE:** Endangered Species Act of 1973

**UNITED STATES CODE CITATION:** 16 U.S.C. 1531 et seq.

**OTHER TITLES AND POPULAR NAMES:** ESA; Conservation, Protection and Propagation of Endangered Species

**SUMMARY:** The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such endangered species and threatened species (16 U.S.C. 1531). It establishes a policy that all Federal departments and agencies seek to conserve endangered species and threatened species and utilize their authorities in furtherance of the purposes of this Act (16 U.S.C. 1531 and 1536).

Section 7 (16 U.S.C. 1536) states that all Federal departments and agencies shall, in consultation with and with the assistance of the Secretary of the Interior/Commerce, insure that any actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary (Interior/Commerce) to be critical, unless an exception has been granted by the Endangered Species Committee (16 U.S.C. 1536(a)(2)).

Section 9 (16 U.S.C. 1538) identifies prohibited acts related to endangered species, and prohibits all persons, including all Federal, state and local governments, from taking listed species of fish and wildlife, except as specified under the provisions for exemptions (16 U.S.C. 1539). The term “take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(18)). Provisions for civil penalties, criminal violations, enforcement, and citizen suits are found at 16 U.S.C. 1540. Additional guidelines for protection of marine mammals are established in the Marine Mammal Protection Act of 1972, as amended. Consultation procedures are administered by the Fish and Wildlife Service (FWS), Department of the Interior, and the National Marine Fisheries Service (NMFS), Department of Commerce.

Section 10, Habitat Conservation Plan Policies. The Habitat Conservation Plan process developed pursuant to this section of the Act includes provisions that allow for the incidental take of endangered and threatened species by private interests and non-Federal government agencies. The purpose of this section is to reduce the disincentives (fear of regulatory restrictions) that often cause landowners to avoid or prevent land use practices that would otherwise benefit listed species. Related to this provision are the “Safe Harbor” agreements and assurances that authorize incidental take of listed species when there is a net conservation benefit to the covered species through some proactive measures specifically for the species.

This Act was amended in 2000 to require that certain species conservation reports shall continue to be submitted (16 U.S.C. 1544).

**RESOURCES COVERED:** Fish, wildlife and their habitat, and plants; Any mammal, fish, bird, (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part product, egg, or offspring thereof, or the dead body parts thereof (16 U.S.C. 1532 (8)). Also, any member of the plant kingdom, including seeds, roots and other parts thereof (16 U.S.C 1532(14)).

**COMPLIANCE REQUIREMENTS:** Federal agencies must request that the FWS or NMFS, as appropriate, furnish information as to whether any listed species or designated critical habitat are

in the proposed project area. If the FWS/NMFS provides listed or proposed species or designated critical habitat, the Corps shall prepare a biological assessment to determine if the proposed project may affect the species or their habitat. The biological assessment shall be completed within a time period mutually agreed to by the Corps, the USFWS, and/or the NMFS, and before any contract for construction is entered into and before construction is begun. Areas that should be avoided or critically considered, as well as opportunities for conserving these resources will be considered during formulation of alternative plans (ER 1105-2-100).

If, biological assessment indicates that an alternative plan(s) may affect a listed species or critical habitat, the Corps will request formal consultation with the FWS/NMFS. If the assessment determines that the alternative plan(s) is not likely to adversely affect the species or critical habitat, then the Corps may request informal consultation with the FWS/NMFS to receive their written concurrence with the determination of no adverse affect. If the FWS/NMFS do not concur with the no adverse determination, the FWS/NMFS may request that the Corps initiate formal consultation (ER 1105-2-100).

The finding, by the Corps, that a proposed construction or operational activity will negatively impact an endangered or threatened species, or its critical habitat, will initiate the preparation of a biological opinion by the USFWS and/or the NMFS. This biological opinion will include a detailed discussion of the effects of the proposed action on the species or its critical habitat, and a summary of the information upon which the opinion is based. The biological opinion will also include a determination on whether the proposed action is likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. If a jeopardy decision is reached, the resource agencies will suggest reasonable and prudent alternatives for the proposed action, if any are possible. The Corps is required to carefully consider the reasonable and prudent measures to protect and conserve the species and critical habitat. The biological opinion may also include a conservation plan, which the Corps is not required to implement, but should consider to see if the plan or portions of the plan may be implementable.

An incidental take provision is included in all biological opinions, where an anticipated take may occur, whether there is a "no jeopardy" or "likely jeopardy" opinion. This provision permits the district commander to "take" a specified number of the protected species, or impact a specified acreage of habitat in the project area, without being subject to the penalties established in 16 U.S.C. 1540. The incidental take statement will also specify "reasonable and prudent" measures necessary to minimize impacts; set for terms and conditions; and specify procedures to be used to handle or dispose of any individuals of a species taken (ER 1105-2-100, 7-33, b(5)).

Consultation shall be concluded within a 90 day period (or other period mutually acceptable to the agency and FWS/NMFS). During consultation, the Corps cannot make any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews and Consults:** U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

**Process:** Section 7 Consultation (50 C.F.R. 402).

**Product:** Species List, Biological Assessment, Biological Opinion.

**Timing/Schedule:** FWS/NMFS will provide list of species, within 30 days of request; Biological Assessment completed by Corps within 180 days from receiving Species List, or within a time

period mutually agreed to by the Corps and resource agencies, and before any contract for construction is entered into and before construction is begun; Biological Opinion completed by the FWS/NMFS within 90 days, and 45 days to deliver, a total of 135 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 2.

**Regulatory:** 33 C.F.R. 320, 323, 325, 330 (Updated November 22, 1991)

**FOR MORE INFORMATION SEE:** Marine Mammal Protection Act of 1972

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** U.S. Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration (National Marine Fisheries Service)

**Guidance Title:** Interagency Cooperation-Endangered Species Act of 1973, as amended; Final Rule

**Code of Federal Regulations Citation:** 50 C.F.R. Part 402, Joint Regulations on Endangered Species establishes the procedural regulations governing interagency cooperation under Section 7 of the Endangered Species Act; 50 C.F.R. 450: Exemption Procedures. There are additional C.F.R. titles that provide related guidance for programs of other agencies.

**MANAGEMENT OPPORTUNITIES:** On 28 September 1994, a Memorandum of Understanding was signed by the Acting Assistant Secretary of the Army, along with six other Federal departments, to establish a general framework for cooperation and participation among the departments in the exercise of their responsibilities under the Act. The departments will work together to achieve the common goals of (1) conserving species listed as threatened or endangered under the Act; (2) using existing Federal authorities and programs to further the purposes of the Act; and , (3) improving the efficiency and effectiveness of interagency consultations conducted pursuant to Section 7(a)(2) of the Act.

There may be opportunities for the Corps to restore or protect habitat for threatened and endangered species, or to contribute to endangered species recovery plans, as part of ecosystem restoration, natural resources management, dredged material management and water control management projects and initiatives. Also, with respect to the Habitat Conservation Plans, the Corps can provide technical, particularly hydraulic, expertise and assistance, facilitate local sponsor coordination with the USFWS and the NMFS, and recognize endangered species' needs in operation and maintenance manuals for projects.

## ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970

**LEGISLATIVE TITLE:** Environmental Quality Improvement Act of 1970

**UNITED STATES CODE CITATION:** 42 U.S.C. § 4371 to 4375

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act was implemented as Title II of P.L. 224 (Federal Water Pollution Control Act Amendments of 1970) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement policies established under existing law, and to authorize an Office of Environmental Quality in the Executive Office of the President to provide professional and administrative staff for the Council on Environmental Quality (established by NEPA (42 U.S.C. 4343). The Chairman of the CEQ is appointed Director of the Office of Environmental Quality. This office is directed to (1) assist Federal agencies and departments in appraising the effectiveness of their existing and proposed facilities, programs, policies, and activities which affect environmental quality, (2) reviewing the adequacy of existing systems to monitor and predict environmental change, (3) promote the advancement of scientific knowledge of effects of actions and technology on the environment, and (4) assist in coordination among Federal departments and agencies in those programs and activities which affect, protect, and improve environmental quality (42 U.S.C. 4341-4347).

**RESOURCES COVERED:** Overall environmental policy for protection and enhancement of environmental quality.

**COMPLIANCE REQUIREMENTS:** None specified that are applicable to the Corps.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** None specified

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** National Environmental Policy Act

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Council on Environmental Quality

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** N/A

**MANAGEMENT OPPORTUNITIES:** None identified.

## ESTUARIES AND CLEAN WATERS ACT

**LEGISLATIVE TITLE:** Estuaries and Clean Waters Act of 2000

**UNITED STATES CODE CITATION:** various – see below

**OTHER TITLES AND POPULAR NAMES:** None

**SUMMARY:** This Act includes a number of provisions, with Title I – Estuary Restoration being most relevant to the Civil Works program. Title I is cited as the “Estuary Restoration Act” (33 U.S.C 2901) and is discussed in a separate summary profile in this desk reference. Other titles within the Act include:

- a) Title II – Chesapeake Bay Restoration (33 U.S.C. 1251), which authorizes a cooperative program between the Environmental Protection Agency (EPA) and the State of Maryland, Commonwealths of Virginia and Pennsylvania, and the District of Columbia to achieve improved water quality and improved productivity of living resources in the Chesapeake Bay.
- b) Title III – National Estuary Program (33 U.S.C. 1330) with provisions that amend the Federal Water Pollution Control Act related to specified locations, grants and appropriations.
- c) Title IV - Long Island Sound Restoration (33 U.S.C. 1251) amends provisions of the Federal Water Pollution Control Act (Section 119) related to innovative technologies, assistance for distressed communities and appropriations.
- d) Title V – Lake Pontchartrain Basin Restoration (33 U.S.C. 1251) amends provisions of the Federal Water Pollution Control Act to establish a Lake Pontchartrain Basin Restoration Program within EPA.
- e) Title VI – Alternative Water Sources (33 U.S.C. 1251) amends Title II of the Federal Water Pollution Control Act by establishing a pilot program to make grants to states, interstate, and intrastate water resources development agencies, local government agencies, private utilities, and nonprofit entities for alternative water source projects to meet critical water supply needs.
- f) Title VII- Clean Lakes amends the Federal Water Pollution Control Act provisions related to grants to states and demonstration program (33 U.S.C 1324(c) and (d)).
- g) Title VIII – Tijuana River Valley Estuary and Beach Cleanup (22 U.S.C 277d-43) authorizes actions to comprehensively address the treatment of sewage emanating from the Tijuana River area, Mexico, that flows untreated or partially treated in the United States causing significant adverse public health and environmental impacts.

**RESOURCES COVERED:** Estuaries, estuary habitat (the physical, biological, and chemical elements associated with an estuary), water quality.

**COMPLIANCE REQUIREMENTS:** See Estuary Restoration Act.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See Estuary Restoration Act.

**Process:** See Estuary Restoration Act.

**Product:** See Estuary Restoration Act.

**Timing/Schedule:** See Estuary Restoration Act.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specified.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None specified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None specific to the Corps.

**Guidance Title:** None specific to the Corps.

**Code of Federal Regulations Citation:** None specific to the Corps.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to coordinate its studies, projects and programs to complement the implementation of Titles II- VIII initiatives through regional collaborative efforts with Federal, state and other entities who are authorized and funded to carry out projects, studies and other initiatives under these provisions.

# ESTUARY PROTECTION ACT

**LEGISLATIVE TITLE:** Estuaries-Inventory-Study

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1221 et seq

**OTHER TITLES AND POPULAR NAMES:** Estuarine Protection Act; Estuary Protection Act

**SUMMARY:** This Act authorizes the Secretary of Interior, in cooperation with the States, Secretary of the Army and other Federal agencies, to conduct an inventory and study of the Nation's estuaries, to facilitate estuary protection, conservation and restoration in a manner that maintains the balance between conserving the natural resources and natural beauty of the Nation and the need to develop these estuaries for further growth and development of the Nation. Considerations of this study are to include: (1) wildlife and recreational potential of estuaries, their ecology, their value to the marine, anadromous and shell fisheries, and their esthetic value; (2) their importance to navigation, value for flood, hurricane, and erosion control, mineral value, and value of submerged lands; and, (3) the value of such areas for more intensive development for economic use as part of urban, commercial and industrial development (16 U.S.C. 1222). The Act requires Federal agencies, in planning for the use or development of water and related land resources, to give consideration to estuaries and their natural resources. All plans and projects submitted to Congress shall include a discussion by the Secretary of Interior of such estuaries and resources, and the potential impact of the proposed project on them, as well as his recommendations thereon (16 U.S.C. 1224).

**RESOURCES COVERED:** Estuaries; coastal marshlands, bays, sounds, seaward areas, lagoons, and the land and waters of the Great Lakes (16 U.S.C. Section 1222(a)).

**COMPLIANCE REQUIREMENTS:** As part of planning for the use and development of water and water related land resources, the Corps must give consideration to estuaries and their natural resources. Reports to Congress on projects in and around estuaries shall include a discussion of such estuaries and resources, and the potential impact of the proposed project on them.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, Secretary of the Army, other Federal agencies, States

**Process:** Circulation of project reports for review by the appropriate Department of the Interior agencies

**Product:** Study and inventory reports of the Nation's estuarine areas.

**Timing/Schedule:** Secretary of the Interior has 90 days to make recommendations on Corps reports.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 220-230; 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Corps can coordinate studies and other initiatives in and around estuaries with Department of Interior agencies and State agencies implementing programs to further the purposes of this Act. The Corps may also be able to contribute data and other information to their studies. There may be opportunities to implement Ecosystem Restoration projects that are responsive to estuary restoration and protection needs.

## ESTUARY RESTORATION ACT

**LEGISLATIVE TITLE:** Estuary Restoration Act of 2000

**UNITED STATES CODE CITATION:** 33 U.S.C. § 2901, et seq.

**OTHER TITLES AND POPULAR NAMES:** Title I of the Estuaries and Clean Water Act of 2000

**SUMMARY:** The purposes of the act are: 1) to promote the restoration of estuary habitat; 2) to develop a national estuary habitat restoration strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors; 3) to provide Federal assistance for estuary habitat restoration projects and to promote efficient financing of such projects; and 4) to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies. (Section 103, (22 U.S.C. 2901)).

The Act establishes an estuary habitat restoration program under which the Secretary of the Army may carry out estuary habitat restoration projects and provide technical assistance. Proposed projects must originate from a non-Federal interest, be submitted to the Estuary Habitat Restoration Council, and be selected by the Secretary of the Army from a list provided by the Council.

Required project elements include: 1) addressing needs identified in an estuary habitat restoration plan; 2) consistency with the estuary habitat restoration strategy (as per Section 106 (33 U.S.C. 2904)); 3) a monitoring plan consistent with the data standards discussed in Section 107 (33 U.S.C. 2906); 4) satisfactory assurance that the non-Federal interest proposing the project will be able to carry out the items of local cooperation and properly maintain the project.

Factors for project selection include: 1) whether the project is part of an approved Federal estuary management or habitat restoration plan; 2) technical feasibility; 3) scientific merit; 4) whether increased coordination and cooperation among Federal, state, and agencies will be encouraged; 5) whether public-private partnerships are fostered, including private funds or in-kind contributions; 6) cost effectiveness; 7) whether the state in which the project will be located has a dedicated source of funding to acquire open space for the benefit of estuary habitat restoration or protection; 8) other factors that the Secretary determines to be reasonable and necessary for consideration (33 U.S.C. 2903).

Federal cost sharing is specified for construction (not to exceed 65%; except for interim actions as described in Section 104(e)(2)), innovative technology for project pilot testing (85%). The non-Federal share shall include lands, easements, rights-of-way, and relocations and may include services, or other in-kind contributions determined by the Secretary to be appropriate (33 U.S.C. 2903(d)).

Section 106 of the act (33 U.S.C. 2905) directs development of an Estuary Habitat Restoration Strategy, and specifies the goal of restoring 1,000,000 acres of estuary habitat by the year 2010. The act authorizes the Under Secretary for Oceans and Atmosphere of the Department of Commerce to develop and maintain a database on restoration projects carried out under this title, including information on project techniques, completion, monitoring data, and other relevant information (Section 107 (33 U.S.C. 2906)).

The act authorizes appropriations for the Secretary of the Army to carry out and provide technical assistance for restoration projects, for the Under Secretary for Oceans and Atmosphere of the Department of Commerce to acquire, maintain and manage monitoring data on restoration projects, for administration and operation of the Council in Section 109 (33 U.S.C. 2908).

The act authorizes the Secretary to undertake and update information on sites appropriate for beneficial uses of dredged material for the protection, restoration and creation of aquatic and ecologically related habitats, including wetlands to further purposes of this study (Section 110 (33 U.S.C. 2909)).

**RESOURCES COVERED:** Estuaries, which are defined as a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water derived from land drainage (Section 103(2)). The term also includes near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries. Estuary habitat means the physical, biological, and chemical elements associated with an estuary, including the complex of physical and hydrologic features and living organisms within the estuary and associated ecosystems (Section 103(3)) (33 U.S.C. 2902).

**COMPLIANCE REQUIREMENTS:** The Secretary of the Army (or the Secretary's designee) shall serve on the Estuary Habitat Restoration Council established by this act. The Council is to develop an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits derived from estuary habitat restoration projects and foster coordination of Federal and non-Federal activities related to restoration of estuary habitat. In developing the strategy, the Council is to review Federal programs established under laws that authorize funding for estuary habitat restoration activities. Elements of the strategy are described in Section 106(d) (33 U.S.C. 2905). Reports to Congress on the results of activities carried out under this title are specified in Section 108 (33 U.S.C. 2907).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Estuary Habitat Restoration Council is composed of: Secretary of Army; Under Secretary for Oceans and Atmosphere of the Department of Commerce; the Administrator of EPA; the Secretary of the Interior, acting through the Director of the U.S. Fish and Wildlife Service; the Secretary of Agriculture; or their designees, and the head of any other Federal agency designated by the President as an ex officio member. Consultation with recognized scientific experts, state, regional and local agencies, and non-governmental agencies and organizations, representatives of Indian tribes and specific interests is discussed in Section 105(i) (33 U.S.C. 2904).

**Process:** The Council is to solicit, review, and evaluate project proposals, and develop a national strategy for restoration of estuary habitat. Meetings shall be open to the public.

**Product:** A national strategy for restoration of estuary habitat, a list of recommended projects, including a recommended priority order, and recommendations as to whether a project should be carried out by the Secretary of the Army or by another Federal department or agency. Ultimately 1,000,000 acres of restored estuary habitat by the year 2010. A database of restoration project information.

**Timing/Schedule:** Submittal of the strategy to Congress by one year after the date of enactment of the act (November 7, 2000). No timing or schedule specified for individual projects.

## CORPS GUIDANCE

**Civil Works Planning:** None specified.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None specified.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Guidance prepared by the Council and the strategy will be published in the Federal Register.

**Guidance Title:**

**Code of Federal Regulations Citation:**

**MANAGEMENT OPPORTUNITIES:** Per provisions of the Act, the Corps participates on the Estuary Habitat Restoration Council, and once the Estuary Habitat Restoration Program is funded, will be able to implement projects specifically under this authority. Appropriations for this program will provide opportunities to implement cost-shared estuary habitat restoration projects and activities. The Act provides authority for the Corps to carry out estuary habitat restoration projects and to provide technical assistance, and emphasizes partnerships within the federal government and with state and local governments, along with the private sector to promote efficient financing of estuary habitat restoration projects. Without funding specific to this program, existing Civil Works authorities could potentially be used, to the extent possible, to implement the strategy. The legislation serves to re-emphasize estuaries as significant ecosystems for consideration across Civil Works programs.

The Act authorizes the Secretary to undertake and update information on sites appropriate for beneficial uses of dredged material for the protection, restoration and creation of aquatic and ecologically related habitats, including wetlands to further purposes of this study (Section 110 (33 U.S.C. 2909)). It may be instances to contribute to these efforts through dredged material management planning.

# FARMLAND PROTECTION POLICY ACT

**LEGISLATIVE TITLE:** Subtitle I of Title XV of the Agriculture and Food Act of 1981

**UNITED STATES CODE CITATION:** 7 U.S.C. §§ 4201 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act amends the Agriculture and Food Act of 1981. The purpose of this Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that will be compatible with State, local government and private programs and policies protecting farmland. The Act instructs the Department of Agriculture, in cooperation with other departments, agencies, independent commissions and other units of the Federal government, to develop criteria for identifying the effects of Federal programs on the conversion of farmland to nonagricultural uses. It does not provide a basis for any action, either legal or equitable, by any person

**RESOURCES COVERED:** Prime and unique farmlands

**COMPLIANCE REQUIREMENTS:** This Act (Subtitle I of Title XV of the Agriculture and Food Act of 1981) is implemented under Department of Agriculture final rule effective 6 August 1984 (7 C.F.R. 658). The final rule requires that Corps districts contact the Natural Resource Conservation Service (NRCS) for identification of prime or unique farmland which might be impacted by proposed Corps actions. Prior to taking any action that would result in conversion of designated prime or unique farmland to nonagricultural uses, the Corps must examine the potential impacts of the proposed action and if there are adverse effects on farmland preservation, consider alternatives to lessen the adverse effects. It is the Corps discretion to proceed with a project once the required examination is completed. The analysis is an integral part of the environmental assessment process under NEPA and the analysis and results will be included as part of the final NEPA document.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Agriculture (Natural Resources Conservation Service (formerly the Soil Conservation Service))

**Process:** Early in a feasibility study, the Corps fills out parts I and III of the Farmland Conversion Impact Rating Form (Form AD 1006) and, via the form and transmittal letter, provides basic project and site information to the NRCS. The NRCS assesses the information provided, measures the relative value of the site as farmland, and provides other pertinent information. NRCS returns form AD 1006 with parts II, IV, and V completed. The Corps uses the evaluation criteria provided by NRCS and site assessment criteria (part VI of the form) and derives a combined score (part VII of form). The combined score helps determine the level of consideration that an area should receive in plan formulation.

**Product:** Form AD 1006 should be included as an attachment to the NEPA document.

**Timing/Schedule:** NRCS must return Form 1006 (with parts II, IV, and V complete) within 45 calendar days from receipt of the Corps request.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Council on Environmental Quality Memorandum of August 11, 1980: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Agriculture; Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 7 C.F.R. 658 August 6, 1984, USDA Final Rule, Farmland Protection Policy, Proposed revisions published on January 8, 1987.

**MANAGEMENT OPPORTUNITIES:** The Corps is responsible for planning activities to avoid prime and unique farmland whenever possible.

## **FEDERAL FACILITIES COMPLIANCE ACT**

**LEGISLATIVE TITLE:** Federal Facility Compliance Act of 1992

**UNITED STATES CODE CITATION:** This Act, P.L. 102-386 (106 STAT 1505) amends the Resource Conservation and Recovery Act (RCRA); readers are referred to RCRA for a summary of the Federal Facilities Compliance Act as it amends RCRA.

**OTHER TITLES AND POPULAR NAMES:** FFCA

**SUMMARY:** This Act provides for a waiver of sovereign immunity with respect to Federal, state, and local procedural and substantive requirements relating to the Resource Conservation and Recovery Act (RCRA) solid and hazardous waste laws and regulations at Federal facilities. Federal agencies are responsible for compliance and government agents or employees are subject to criminal sanctions under any Federal or authorized state solid or hazardous waste law. In addition, EPA is authorized to issue Administrative Orders to Federal agencies and may, as are authorized states, levy fines in the event of non-compliance (42 U.S.C. 6961). It also directs the Environmental Protection Agency to make annual inspections of facilities owned or operated by the United States which treat, store, or dispose of hazardous waste to insure compliance with applicable regulations. Authorized states may also conduct inspections to insure compliance with authorized State hazardous waste programs (42 U.S.C. 6927(c)). Additionally, it defines hazardous waste in relation to public vessels, expands the definition of mixed waste, and discusses waste discharges to Federally owned treatment works.

See: Resource Conservation and Recovery Act

# FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

**LEGISLATIVE TITLE:** Federal Insecticide, Fungicide, and Rodenticide Act

**UNITED STATES CODE CITATION:** 7 U.S.C. § 136 et seq.

**OTHER TITLES AND POPULAR NAMES:** FIFRA; Federal Environmental Pesticide Control Act, FEPCA

**SUMMARY:** This Act requires that all pesticides used in the United States be submitted for registration by the Environmental Protection Agency (EPA)(7 U.S.C. 136(a)). To be approved for registration, pesticides must meet criteria set forth by the EPA regarding the quantity, quality and impact upon the environment by the active ingredient(s). Approved pesticides must also be labeled as such. The EPA is required to publish a list of all registered pesticides by the classification and certification by specific use. FIFRA requires registration of chemicals used to control pests. It also requires EPA to establish regulations for the storage and disposal of pesticide containers, excess pesticides and pesticides for which registration has been canceled. Under FIFRA, no manufacturer or importer may make or sell a product for use to control pests unless the compound is registered with EPA. The Act also outlines penalties, indemnities, and administrative procedures (7 U.S.C. 136(l-n)). In addition, the Administrator may, at his discretion, exempt any Federal or state agency from any provision of this Act, if he determines emergency conditions, requiring such exemption, exist (7 U.S.C. 136(p)).

**RESOURCES COVERED:** Pesticides, fungicides, rodenticide, and insecticides.

**COMPLIANCE REQUIREMENTS:** Mostly applicable to operations activities; Corps or contractor personnel applying pesticides must use registered pesticides, use properly licensed applicators, provide proper training, and store materials in approved containers and buildings.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The EPA requires registration of all pesticides, issues guidelines for use by states, and maintains regulations for several restricted use pesticides. States generally regulate pesticide applicator licensing and certification, pesticide application regulations and record keeping, restricted use pesticides, pesticide storage, container disposal, aquatic applications, and numerous other rules.

**Process:** Decision to register pesticide can result in (1) granting registration in form requested by manufacturer; (2) deny of registration outright; or (3) grant of registration with specific use limitations.

**Product:** Pesticide registration and approval for use.

**Timing/Schedule:** None specified

## CORPS GUIDANCE:

ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3; applies to all Corps' activities performed on fee-owned lands, regardless of Division or office.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3.

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 40 C.F.R. 152-180, except section 157

**MANAGEMENT OPPORTUNITIES:** Executive Orders and Corps policy guidance offers the opportunity to utilize more biological controls, encourage alternatives to chemicals, and require more stringent controls over chemical use and choices.

# FEDERAL LAND POLICY AND MANAGEMENT ACT

**LEGISLATIVE TITLE:** Federal Land Policy and Management Act of 1976

**UNITED STATES CODE CITATION:** 43 U.S.C. § 1701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes the public land policy and guidelines for the administration of public lands administered by the Department of Interior, through Bureau of Land Management (BLM), and gives the BLM their mission statement. Direction is given to other agencies that undertake activities that would result in the “withdrawal” of such public lands. As paraphrased from the Act, “withdrawal” means withholding an area of Federal land from settlement, sale or entry , for the purpose of limiting activities or reserving the area for a particular purpose or program (43 U.S.C. 1702). The Secretary of Defense and the Secretaries of military departments within the Department of Defense (43 U.S.C. 1732), are directed to manage the lands under their jurisdictions, that are adjacent to lands referenced in this Act, in a manner consistent with the Act, wherever practicable. The Department of Defense activities noted in the Act, and its amendments, address military functions and activities. Restrictions on military activities on public lands in Alaska, including environmental requirements for avoiding impacts are addressed in 43 U.S.C. 1732. This law may be applicable to the Civil Works program if the issue of withdrawn public lands arises in connection with a civil works program or activity.

**RESOURCES COVERED:** Public lands.

**COMPLIANCE REQUIREMENTS:** To be determined on a case-by-case basis.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Interior, Bureau of Land Management; Department of Agriculture

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified specific to Civil Works Program.

**MANAGEMENT OPPORTUNITIES** None identified.

# FEDERAL WATER PROJECT RECREATION ACT

**LEGISLATIVE TITLE:** Federal Water Project Recreation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 4601-12 -4601-22, 662

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act establishes the policy that consideration be given to the opportunities for outdoor recreation and fish and wildlife enhancement in the investigating and planning of any Federal navigation, flood control, reclamation, hydroelectric or multi-purpose water resource project, whenever any such project can reasonably serve either or both purposes consistently (16 U.S.C. 4601-12). Recreational use of projects will be coordinated with other existing and planned Federal, State, or local recreational developments. The Act does not apply to local flood control, beach erosion control, small boat harbors, or hurricane protection projects (16 U.S.C. 4601-17(e)). Non-Federal bodies will be encouraged to operate and maintain project recreational and fish and wildlife enhancement facilities. If non-Federal bodies agree in writing to administer the facilities at their expense and to pay one-half the separable first cost, the recreation and fish and wildlife benefits shall be included in project benefits and project costs allocated to recreation and fish and wildlife. Fees may be charged by the non-Federal interests to repay their costs. If non-Federal bodies do not so agree, no facilities for recreation and fish and wildlife may be provided except those justified to serve other purposes or as needed for public health and safety. However, project land may be acquired to preserve the recreational potential. If within 10 years after initial project operation there is no local agreement the land may be used for other purposes or sold (16 U.S.C. 4601-13).

Benefits for recreation should be included in the economics of a contemplated project, provided that non-Federal public entities agree (letter of intent) to participate in the recreation development. Recent Corps policy resulting from the Water Resources Development Act of 1986 is that a non-Federal public body must cost share recreation (50% of separable costs), and bear all costs of operation, maintenance, repair, and rehabilitation (OMRR). The Corps is authorized to construct minimum health, safety, and access facilities without cost sharing. The Act also contains a provision that non-Federal public bodies may elect to lease recreation facilities and lands as long as they agree to bear OMRR responsibilities and costs.

The Secretary of Interior is authorized to enter into agreements with Federal agencies to promote development and operation of lands or facilities for recreation and fish and wildlife enhancement purposes (16 U.S.C. 4601-18(b)).

**RESOURCES COVERED:** Water resources development projects; outdoor recreation; fish and wildlife enhancement.

**COMPLIANCE REQUIREMENTS:** Documentation in Corps reports and NEPA documents that recreation opportunities were considered during the planning and design processes.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Non-Federal project sponsors and community.

**Process and Product:** Recreation lands and facilities incorporated into flood control, navigation, reservoir, and storm damage and hurricane protection projects

**Timing/Schedule:** Recreation planning is accomplished at the same level of detail as other aspects of civil works projects during reconnaissance, feasibility, and detailed design phases.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Chapter 3, Section 7, and Appendix E; ER 1165-2-400, Recreational Planning, Development, and Management Policies, Chapter 1; Policy Guidance Letter No. 30, Recreation Cost Sharing Credit for Increased Real Estate Interest for Recreation Development at Non-Reservoir Projects; Policy Guidance Letter No. 36, Recreation Development at Structural Flood Control Projects (Non-Reservoir), Policy Guidance Letter No. 59, Recreation Development at Ecosystem Restoration Projects.

**Civil Works Engineering:** EM 1110-2-410, Design of Recreation Facilities - Access and Circulation

**Civil Works Construction:** ER 1130-2-550, Recreation Operations and Maintenance Policies; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies.

**Civil Works Operations:** 1130-2-550, Recreation Operations and Maintenance Policies, and EP 1130-2-550, Recreation Operations and Maintenance Guidance and Procedures; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Fish and Wildlife Coordination Act (16 U.S.C. 662); Reclamation Projects Authorization and Adjustments Act of 1992 (16 U.S.C. 460l-13(a)).

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Act encourages state, regional and local agencies to more fully participate in the planning and operation of outdoor recreation and fish and wildlife facilities and enhancement at Corps constructed projects. Through state and local participation in the funding and management of outdoor recreation and fish and wildlife related features, design and operation can be more in accordance with local and regional needs and desires. Further the Act allows Corps construction of minimal health, safety and access facilities in the absence of local cost sharing agreements. These minimal facilities will assist the Corps in protecting the health and safety of the public visiting Corps managed lands, where state and local agencies have declined to participate in recreation and fish and wildlife planning and operation for the completed project.

# FISH AND WILDLIFE CONSERVATION ACT

**LEGISLATIVE TITLE:** Fish and Wildlife Conservation Act of 1980

**U.S. CODE CITATION:** 16 U.S.C. §§ 2901-2911

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act declares that fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic and scientific value to the Nation. The Act acknowledges that historically, fish and wildlife conservation programs have focused on more recreationally and commercially important species within any particular ecosystem, without provisions for the conservation and management of non-game fish and wildlife. The purposes of this Act are to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of non-game fish and wildlife and their habitats, in furtherance of the provisions of this chapter, and to provide financial and technical assistance to States to conduct inventories and conservation plans for conservation of non-game wildlife (16 U.S.C. 2901(b)). The Act defines "fish and wildlife" as wild "vertebrate animals in an unconfined state, including, but not limited to, "nongame fish and wildlife," and "nongame fish and wildlife" as wild vertebrate animals in an unconfined state, that are not ordinarily taken for sport, fur or food, not listed as endangered or threatened species, and not marine mammals within the meaning of 16 U.S.C. 1362(5). (16 U.S.C. 2902 (6) (A), (B), (C)).

**RESOURCES COVERED:** Nongame fish and wildlife, excluding listed endangered species or threatened species, and marine mammals as defined in 16 U.S.C. 1362(5).

**COMPLIANCE REQUIREMENTS:** None specified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews and Consults:** Department of the Interior, Department of Commerce, States

**Process and Product:** State conservation plans.

**Timing/Schedule:** Upon receiving State's application, the Secretary of the Department of the Interior has 180 days to approve or disapprove the State's application

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320, Navigation and Navigable Waters, Corps of Engineers, General Regulatory Policies.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation: 50 C.F.R. 83**

**MANAGEMENT OPPORTUNITIES:** The Secretary of the Army may loan to any state such personnel and equipment, share information, and provide financial and such other assistance as the Secretary determines appropriate for the purposes of assisting any State to develop or revise conservation plans (16 U.S.C. 2908).

## FISH AND WILDLIFE COORDINATION ACT

**LEGISLATIVE TITLE:** Fish and Wildlife Conservation and Water Resource Developments-Coordination

**UNITED STATES CODE CITATION:** 16 U.S.C. § 661 et seq.

**OTHER TITLES AND POPULAR NAMES:** Fish and Wildlife Coordination Act; Coordination Act; FWCA

**SUMMARY:** A primary purpose of the act is to provide for more effective integration of fish and wildlife conservation within Federal water resources development. It states that “wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation” (16 U.S.C. 661). The act authorizes the Secretary of Interior to provide assistance to, and cooperate with Federal, state and public or private agencies and organizations in developing, protecting, rearing and stocking wildlife resources and their habitat through various conservation measures and approaches. Federal agencies are directed to consult with the US Fish and Wildlife Service (USFWS) and relevant state wildlife resource agencies “whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage”. The intent of this consultation is to help integrate “the conservation of wildlife resources by preventing loss of and damage to such resources” as well as provide for “the development and improvement thereof in connection with such water-resource development”.

The act authorizes the USFWS to conduct surveys and investigations to determine the possible damage of proposed development on wildlife resources, and to make recommendations to construction agencies regarding means and measures to prevent the loss or damage to wildlife resources, as well as to provide concurrently for the development and improvement of such resources. Construction agencies are authorized to transfer funds to the USFWS to carry out these in investigations out of appropriations or other funds made available for investigations, engineering, or construction (16 U.S.C. 661e).

The provisions of 16 U.S.C. 661- 666c are not applicable to those projects where the maximum surface area of impoundment is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

Any reports and recommendations of the wildlife agencies shall be included in authorization documents for construction or for modification of projects (16 U.S.C. 662(b)). The Corps shall give full consideration to the reports and recommendations of the wildlife agencies, and include such justifiable means and measures for wildlife mitigation or enhancement as the Corps finds should be adopted to obtain maximum overall project benefits.

The costs of planning, construction or installation, and maintenance of adopted conservation means and measures shall be integral to the cost of the water resources project, provided that costs attributable to the development of wildlife shall not extend beyond those necessary for land acquisition, facilities as recommended in project reports, modification of the project, modification of project operations, but shall not include the operation of wildlife facilities (16 U.S.C. 662(d)).

16 U.S.C. 662(e) authorizes the Corps, to transfer investigation, engineering, or construction funds to USFWS to conduct all or part of the investigations to carry out 16 U.S.C. 622. The Corps has entered into

a Memorandum of Agreement (MOA) with the USFWS for funding their activities pursuant to this law. Funding is provided for general investigation, special studies, continuing authority projects, advanced engineering and design studies, and construction and significant post-authorization change reports. Reports to Congress are to include an estimation of the wildlife benefits or losses for projects including benefits for measures recommended specifically for enhancement, the part of the cost of joint-use facilities allocated to wildlife, and the part of the costs to be reimbursed by non-Federal interests (16 U.S.C. 662(f)). Congressional authorization is required before the Corps can acquire lands, waters and interests for wildlife conservation (16 U.S.C. 663(c)).

16 U.S.C. 665(a) describes provisions for maintaining adequate water levels and management of existing facilities (locks, dams and pools) in the Mississippi River between Rock Island, Illinois and Minneapolis, Minnesota. The Corps is directed to give full consideration of fish and wildlife resources and their habitat dependent on such waters, without increasing additional liability to the Government, and without causing damage to levee and drainage districts, adjacent railroads, highways, farm lands, and dam structures, operation for navigation. Impoundments with a maximum surface area less than ten acres are exempt from the provisions of 16 U.S.C. 661-666(c).

**RESOURCES COVERED:** The terms “wildlife” and “wildlife resources”, as used in this act, “include birds, fishes, mammals and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent” (16 U.S.C. 666(b)). Included are fish and wildlife and their habitats; the birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

**COMPLIANCE REQUIREMENTS:** To accomplish the conservation objectives of the act, preconstruction planning on project development is to be coordinated with the USFWS and relevant state resource management agencies. (The National Marine Fisheries Service (NMFS) provides similar assistance and cooperation for wildlife species under the management responsibilities of the Department of Commerce). The Corps, and other Federal agencies involved in water resource development, is to consult with the FWS and with the agency exercising administration over wildlife resources of the particular state where the proposed project is to be constructed or action taken.

Corps regulations require that the coordination begin with the initiation of the reconnaissance report phase and continue through feasibility and planning, engineering, and design phases of project development. The district must make the reports and recommendations of these entities an integral part of any report presented to Congress or to any agency or person having authority or power (1) to authorize the construction of water resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects. Recommendations provided by the FWS in Coordination Act Reports must be specifically addressed in Corps feasibility reports. Specific guidance is provided in Appendix C, Environmental Compliance, of ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

Regulatory program: The Corps will consult with the Regional Directors of the USFWS and the NMFS, and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct or indirect loss and damage due to the activity proposed in a permit application. The District Engineer will give full consideration to these views in evaluating the application.

## REVIEW AND CONSULTATION REQUIREMENTS

**Agency:** U.S. Fish and Wildlife Service, National Marine Fisheries Service, state wildlife resource management agencies

**Process:** An outline of the process is provided below. Details are provided in the Memorandum of Agreement between the US Fish and Wildlife Service and the US Army Corps of Engineers for Funding of Fish and Wildlife Coordination Act Activities, 1982 (Revised draft agreement August 8, 2001).

**Program Review-** At the beginning of each fiscal year (FY), the Corps districts develop a list of potential projects for which transfer funding may be required, and provide this list to the regional USFWS to aid in planning their workload for the FY.

**Initial Coordination-** Very early in the planning process, a meeting is held to identify potential environmental issues that must be addressed; attendees typically will include US FWS staff, Corps district staff, and if appropriate, representatives of NMFS or the state wildlife resources management agency.

**Development of Scope of Work (SOW)-** After a conceptual plan of study has been developed by the Corps study managers and environmental staff, a draft SOW is negotiated with the USFWS for each specific project for each FY. After the SOW is finalized, the Corps district prepares a cover letter and a Military Interdepartmental Purchase Request (MIPR) DD Form 448 to authorize expenditure of funds, and sends these to the USFWS. The USFWS approves this package and returns a signed copy to the district. The funding arrangement is on a cost reimbursable basis, and the district receives quarterly billings.

**Product:** The FWS conducts habitat surveys, evaluating likely impacts of proposed actions, and making recommendations for avoiding or ameliorating impacts or enhancing fish and wildlife resources. Their input to the Corps is provided both verbally and in written documents such as Coordination Act Reports, Planning Aid Reports, and Planning Aid Letters.

**Timing/Schedule:** The USFWS should provide a timely and useful product, which has been reviewed in draft form by the district. At the completion of each SOW task, the Corps and the USFWS should review and evaluate the product. The USFWS should finalize the report. The Fish and Wildlife Coordination Act Report should be included in the Corps report before going to Congress.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.

**Civil Works Engineering:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; 33 C.F.R. 222; ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information

**Civil Works Construction:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; EC 1165-2-200, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Regulatory:** 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** Agreement between the US Fish and Wildlife Service and the US Army Corps of Engineers for Funding of Fish and Wildlife Coordination Act Activities, signed by Director of Civil Works and Director, U.S. Fish and Wildlife Service - original in 1980, amended in 1982.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 24.1-24.7

**MANAGEMENT OPPORTUNITIES:** The Corps is authorized to modify or add to the structures and operations of water-control projects, and to acquire lands in accordance with the Act in order to accommodate the conservation of wildlife resources as an integral part of water resources projects. Additionally, ecosystem restoration projects may be formulated to restore or protect degraded habitat associated with resources identified in this Act as part of specifically authorized projects and through programmatic authorities (see ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information).

16 U.S.C. 663 provides for the use of Civil Works projects for conservation, maintenance and management of fish and wildlife resources and wildlife habitat. This is accomplished through the licensing of lands and waters to state wildlife agencies or by cooperative agreement with the Secretary of the Interior under terms of a General Plan, ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

# **FISH AND WILDLIFE PROGRAMS IMPROVEMENT AND NATIONAL WILDLIFE REFUGE SYSTEM CENTENNIAL ACT OF 2000**

**LEGISLATIVE TITLE:** Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000.

**UNITED STATES CODE CITATION:** 16 U.S.C. 669

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act amends the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act by enhancing the funds available for grants to States for fish and wildlife conservation projects. It also reauthorizes and amends the National Fish and Wildlife Foundation Establishment Act, and commemorates the centennial of the establishment of the first national wildlife refuge in the U.S.

**RESOURCES COVERED:** fish and wildlife and their associated habitats

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** A priority list of projects is prepared by the International Association of Fish and Wildlife Agencies, in consultation with the heads of state fish and game agencies, nongovernmental conservation organizations, sportsmen organizations, and industries that support hunting. The program is administered by the Secretary of the Interior.

**Process and Product:** None specific to the Corps.

**Timing and Schedule:** None specific to the Corps.

## **CORPS GUIDANCE**

**Civil Works Planning:** None identified  
**Civil Works Engineering:** None identified  
**Civil Works Construction:** None identified  
**Civil Works Operations:** None identified  
**Regulatory:** None identified

**FOR MORE INFORMATION SEE:** None identified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None specific to the Corps.

**Code of Federal Regulations Citation:** None specific to the Corps.

**MANAGEMENT OPPORTUNITIES:** None specific to the Corps.

## FLOOD CONTROL ACT OF 1944

**LEGISLATIVE TITLE:** Flood Control Act of 1944

**UNITED STATES CODE CITATION:** 16 U.S.C. §460d et seq; 33 U.S.C. § 701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** Section 4 of this Act authorizes the Corps, under the supervision of the Secretary of the Army, to construct, maintain and operate public park and recreational facilities at water resources development projects (16 U.S.C. 460(d)). Local interests are also permitted to construct, operate and maintain such facilities with permission from the Secretary of the Army. Water areas of all such projects shall be open to public use generally, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is not found to be contrary to the public interest. The lease of public lands and structures at water projects is also authorized. Recreational uses must be consistent with State laws for the protection of fish and game. All persons designated by the Chief of Engineers for enforcement shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army. Amendments to this Act extend the development of recreation to non-reservoir projects.

**RESOURCES COVERED:** Reservoirs, water resources, recreation facilities.

**COMPLIANCE REQUIREMENTS:** Consider recreation during planning of Corps projects.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Corps with communities, State governmental agencies, and project sponsor.

**Process:** Coordination

**Product:** Mutually acceptable recreation features and operation plan

**Timing/Schedule:** Identification of potential opportunities during reconnaissance phase; development of feasible alternatives and willing cost sharing local partner in feasibility phase; refinement of recreation plan details during detailed design.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-400, Recreational Planning, Development, and Management Policies Chapter 1; ER 1165-2-130, Federal Participation in Shoreline Protection

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works Projects ; EM 1110-1-400, Recreation Planning and Design Criteria; ER 1110-2-2902, Prescribed Procedures for the Maintenance and Operation of Shore Protection Works.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapters 1-2.

**Regulatory:** 33 C.F.R. 222, Corps of Engineers, Department of the Army, Engineering and Design.

**FOR MORE INFORMATION SEE:** Senate Document 97, Land and Conservation Fund Act of 1964; Federal Water Project Recreation Act of 1965; also, Water Resources Development Act of 1992, Section 225 (33 U.S.C. 2328) and Section 203 (33 U.S.C. 2325).

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 36 C.F.R. 327; 33 C.F.R. 208, 209, 211

**MANAGEMENT OPPORTUNITIES:** The Corps' new Challenge Cost-Sharing Program provides opportunities for non-Federal public and private groups and individuals to contribute to and participate in the operation and/or management of recreation facilities and natural resources at Corps water resource development projects (33 U.S.C. 2328).

## FOOD SECURITY ACT OF 1985

**LEGISLATIVE TITLE:** Food Security Act of 1985

**UNITED STATES CODE CITATION:** 16 U.S.C. 3801-3862

**OTHER TITLES AND POPULAR NAMES:** "Swampbuster"; 1985 Farm Bill; 1996 Farm Bill; Federal Agriculture Improvement and Reform Act of 1996; Erodible Land and Wetland Conservation and Reserve Program.

**SUMMARY:** The 1985 Act contains provisions designed to discourage the conversion of wetlands into non-wetland areas. These provision collectively, are commonly referred to as the "Swampbuster" provisions (Food Security Act of 1985 (Title XII, Subtitle C)). Swampbuster provisions denied Federal farm program benefits to producers who converted wetlands after December 23, 1985. The Food, Agriculture, Conservation, and Trade Act of 1990 strengthened Swampbuster by making violators ineligible for farm program benefits for that year and subsequent years. The Act also created a system for inadvertent violations allowing farmers to regain lost Federal benefits if they restore converted wetlands.

The 1996 Farm Bill, (Federal Agriculture Improvement and Reform Act of 1996, PL 104-127) contains numerous provisions that purportedly modify the operation of certain agricultural programs. In particular, Subtitle C, Wetland Conservation, modifies Sections 1221 and 1222 (16 U.S.C. 3821, and 16 U.S.C. 3822) of the Food Security Act of 1985 regarding program ineligibility, wetland delineation, consultation and cooperation requirements, and clarifies the definition of agricultural lands in the Memorandum of Agreement signed with the Department of the Army, the Department of Interior, and the Environmental Protection Agency, January 6, 1994. It also authorizes the Secretary of Agriculture to operate a pilot program for mitigation banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland functions and values.

The Conservation Reserve Program (Title XII) (16 U.S.C. 3831) authorizes the Federal government to enter into contracts with agricultural producers to remove highly erodible cropland from production, in return for annual rental payments. The Wetlands Reserve Program (16 U.S.C. 3837) authorizes enrollment of wetlands for protection and restoration through permanent and temporary (30 year) easements.

**RESOURCES COVERED:** Wetlands; agricultural lands; highly erodible land; converted wetlands.

**COMPLIANCE REQUIREMENTS:** The Corps coordinates its flood control plans involving agricultural lands with the Natural Resources Conservation Service, and alerts project sponsors and affected farmers of their responsibilities for meeting requirements set forth in the "Swampbuster" provisions of the Food Security Act of 1985. The Act provides for certain "third party" exemptions that may be available to landowners who receive ancillary drainage benefits from Corps projects. It is the responsibility of the individual landowner, not the Corps, to request such an exemption.

The U.S. Department of Agriculture's (USDA) implementing guidance for the Swampbuster provisions establishes the terms and conditions under which a person, who has produced an agricultural commodity on newly converted wetlands, shall be declared ineligible for certain benefits provided by USDA. Such benefits include: commodity price support or production adjustment payments; farm storage facility loans; disaster payments; payments for storage of grain owned or controlled by the Commodity Credit Corporation; Federal crop insurance; and FHA loans. Farmers who plant commodity crops, after 23 December 1985, on lands that were

converted from a wetland to a non-wetland condition by a Corps project will trigger "Swampbuster" considerations, which may lead to the cited USDA program ineligibilities. This could result in lessening of sponsor support for a project and a reduction in estimated benefits that might otherwise have been attributed to the project proposal. It could also change the with and without project assumptions used to establish environmental impacts and associated mitigation needs; this is particularly significant where habitat preservation credit is a component of mitigation plans.

The Memorandum of Agreement between the Department of Agriculture, the Environmental Protection Agency, the Department of the Interior, and the Department of the Army on January 6, 1994, gives NRCS authority to make Section 404 (33 U.S.C. 1344) jurisdictional determinations on agricultural lands using the Food Security Act Manual, and the 1996 Amendments further clarify the definition of agricultural lands for the purposes of implementing that agreement. Implementing guidance is currently under development by an interagency working group (as of May 1996).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of Agriculture is to assist, through contracts, owners and operators of such land to help them comply with this act.

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies,

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute. However, efforts are currently underway between the Corps and the NRCS to develop implementing guidance regarding the 1996 amendments to the "Swampbuster Provisions" and the interagency Memorandum of Agreement. There is an MOA between the Department of Agriculture, the EPA, the Department of Interior, and the Department of the Army regarding this Act (see above).

**FOR MORE INFORMATION SEE:** Conservation Reserve Program (Title XII); Fish and Wildlife Coordination Act.

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of Agriculture (USDA) final rule effective 17 September 1987 (7 C.F.R. 12), are administered by the Natural Resource Conservation Service.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 7 C.F.R. 12

**MANAGEMENT OPPORTUNITIES:** None identified.

# HAZARDOUS MATERIALS TRANSPORTATION ACT

**LEGISLATIVE TITLE:** Hazardous Materials Transportation Act of 1974

**UNITED STATES CODE CITATION:** 49 U.S.C. §§ 1801-1819

**OTHER TITLES AND POPULAR NAMES:** HMTA, DOT regulations.

**SUMMARY:** The Act, as last amended in November 1990, is the Federal legislation which governs the transportation of hazardous materials in the nation. The policy of Congress is to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

**RESOURCES COVERED:** Transportation of hazardous materials, including, but not limited to, solvents, asbestos, PCBs, paints, pesticides, hazardous wastes, etc.

**COMPLIANCE REQUIREMENTS:** Persons transporting hazardous materials, including hazardous wastes, must comply with the DOT requirements for shipping papers, container marking and labeling, vehicle placarding, record keeping and all other requirements associated with the safe transportation of hazardous materials.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Transportation

**Process:** Hazardous materials, including hazardous wastes must be properly packaged, labeled and marked. The transport vehicle must be properly placarded. Shipping papers must accompany the shipment and the shipment must be in all aspects in good condition. Records must be maintained.

**Product:** Shipping papers (manifests for hazardous wastes), labels and marks on containers, placards on transport vehicle.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

AR 55-355, Defense Traffic Management Regulation, 31 July 1986

EP 200-1-2, Process and Procedures for RCRA Manifesting, 31 March 1994

Construction Bulletin 96-9 (dated 3/13/96), Hazardous Waste Manifesting Signature Policy and Procedures

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Transportation and the Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 49 C.F.R. 170-178 Hazardous Materials Regulations;  
40 C.F.R. 263 Standards Applicable to Transporters of Hazardous Wastes

**MANAGEMENT OPPORTUNITIES:** Corps Civil Works facilities must prepare shipping papers, properly mark and label containers, and properly placard vehicles carrying hazardous materials. Manifests will be required for hazardous wastes. Training and certification requirements must be met. Records must be maintained.

# HISTORIC SITES ACT OF 1935

**LEGISLATIVE TITLE:** Historic Sites Act of 1935

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 461 to 467

**OTHER TITLES AND POPULAR NAMES:** Historic Sites, Buildings and Antiquities Act, Historic Sites Act

**SUMMARY:** This Act establishes a national policy to preserve for public use, historic sites, buildings, and objects of national significance for the inspiration and benefit of the American people. The Act authorizes the designation of national historic sites and landmarks, authorizes interagency efforts to preserve historic resources, and establishes a maximum fine of \$500 for violations of the Act. The Act authorizes surveys of historic and archeological sites, buildings, and objects to determine which are significant, and provides for the restoration, reconstruction, rehabilitation, preservation, and maintenance of historic or prehistoric properties of national significance. The Secretary of the Interior, through the National Park Service, is authorized to conduct surveys and studies, collect information, and purchase significant historic properties. The Secretary is also authorized to restore, preserve, maintain, and rehabilitate structures and sites. Museums may be established, and the National Park Service may operate and manage historic sites, and develop educational programs.

**RESOURCES COVERED:** Historical and Cultural Properties; historic sites, buildings, and objects of national significance.

**COMPLIANCE REQUIREMENTS:** None specified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, through the National Park Service, with Federal agencies, States, municipal subdivisions, corporations, associations, or individuals.

**Process:** Contracts, cooperative agreements

**Product:** Plans to restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and property of national historical or archaeological significance, and where deemed desirable, establish and maintain museums and educational programs in connection therewith.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** See below

**Code of Federal Regulations Citation:** Implementing Regulation 36 C.F.R. 62 and 65-National Historic Landmarks; 36 C.F.R. 68- Standards for Historic Preservation.

**MANAGEMENT OPPORTUNITIES:** The Secretary of the Interior, through the National Park Service, may seek and accept the assistance of any Federal (i.e., Corps), State or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual in the accomplishment of the historic preservation activities cited in the above "Summary" (16 U.S.C. 464 (a)).

# HISTORICAL AND ARCHEOLOGICAL DATA-PRESERVATION

**LEGISLATIVE TITLE:** Historical and Archeological Data - Preservation

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 469 et. seq.

**OTHER TITLES AND POPULAR NAMES:** Moss-Bennett Act; Historical Data - Dam Construction; Reservoir Salvage Act Amendment; Archeological and Historic Preservation Act; An Act to Provide for the Preservation of Historic American Sites, Buildings, Objects and Antiquities of National Significance

**SUMMARY:** The intent of the Act is to make authorized Federal construction programs, dam construction and specified related activities, and all other Federal projects licensed or assisted by Federal agencies responsive to the damage they will cause to scientific, prehistoric, historical and archeological resources. The Act provides a mechanism through which resources can be salvaged after a decision has been made to proceed with a project. The Act directs Federal agencies to notify the Secretary of the Interior when they find that any Federal construction project or Federally licensed activity or program may cause irreparable loss or destruction of significant resources or data. It also provides for criteria for funding historical and archeological protection for such projects. Section 7 of the Act is interpreted to mean that historic preservation as part of mitigation for Corps projects shall be limited to 1 percent of the total estimated Federal appropriation required for construction of a project, and that this expenditure is a Federal cost. The 1 per centum limitation of this section does not apply in the event that the project involves \$50,000 or less. A waiver request must be submitted to the National Park Service, through the Assistant Secretary of the Army for Civil Works, to exceed the 1 percent limitation. Costs over the 1 percent limitation are shared on the same basis as other joint and separable costs.

**RESOURCES COVERED:** Historical and cultural resources; historic American sites, buildings, objects (relics and specimens), and antiquities of national significance that would be altered, lost, or destroyed by dam construction and operation projects. Archeological data are the focus of the act.

**COMPLIANCE REQUIREMENTS:** Coordinate with Secretary of the Interior, National Park Service, Regional Consulting Archeologist

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Regional Consulting Archeologist (RCA)

**Process:** Federal agencies notify RCA, typically through the Sections 106/110 compliance process, and solicit comments and willingness to provide funding (rarely occurs).

**Product:** Comment letter from RCA

**Timing/Schedule:** Along with overall routine project and NEPA coordination.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works Projects

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** Title II, 33 C.F.R. 320-330, Regulatory Programs of the Corps of Engineers; Final Rule November 13, 1986; 33 C.F.R. 325, Appendix C.

**FOR MORE INFORMATION SEE:** National Historic Preservation Act of 1966, as amended (the NHPA further implements policies and purposes of this Act)

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** The protection to be provided by this Act is subsumed under the compliance process and protection afforded by the National Historic Preservation Act, as amended, and implementing regulations 36 C.F.R. 800.

**MANAGEMENT OPPORTUNITIES:** None identified.

# LAND AND WATER CONSERVATION FUND ACT

**LEGISLATIVE TITLE:** Land and Water Conservation Fund Act of 1965

**UNITED STATES CODE CITATION:** 16 U.S.C. § 4601-4 et seq

**OTHER TITLES AND POPULAR NAMES:** Land and Water Conservation Act, LWCFA

**SUMMARY:** The Act established a fund from which Congress can make appropriations for outdoor recreation. The fund derives revenue from entrance and user fees, sale of surplus Federal property, and the Federal motorboat fuel tax. The National Park Service provides assistance to the states and territories in preparing and maintaining Statewide Comprehensive Outdoor Recreation Plans (SCORPs), under the Act. Planning for recreation development at Corps projects is coordinated with the appropriate states so that the plans are consistent with public needs as identified in the SCORPs. The Corps must coordinate with the Secretary of the Interior to insure that no property acquired or developed with assistance from this Act will be converted to other than outdoor recreation uses. The Secretary must assure that conversions are in accordance with existing comprehensive outdoor recreation plans, and that any substitution of other recreation properties are of at least fair market value and of reasonably equivalent usefulness and location.

**RESOURCES COVERED:** Recreation Facilities and Fish and Wildlife Resources; (See list of recreation facilities per ER 1105-2-11, Appendix J).

**COMPLIANCE REQUIREMENTS:** Documentation of coordination with the Secretary of the Interior is provided in feasibility reports in situations where Corps undertakings will or may affect (convert) properties or facilities acquired or developed with assistance from this Act. If conversion is necessary, approval of the Secretary is required and plans are usually developed to relocate or recreate affected recreational opportunities.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior (National Park Service), States

**Process and Product:** Statewide Comprehensive Outdoor Recreation Plans (SCORPs), developed by the states which identify recreation opportunities and priorities for land acquisition and development of recreational facilities. Federal agencies are to consider the information in SCORPs during their planning activities (16 U.S.C. 4601-8).

**Timing/Schedule:** Impacts to recreation areas and facilities are considered and coordinated throughout the Corps planning process. An initial assessment is made during the reconnaissance phase. Specific, formal coordination with Local and State officials, and the Secretary of the Interior, occurs during the feasibility phase.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, chapter 3, Section 7; ER 1165-2-400, Recreational Planning, Development, and Management Policies.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 1165-2-400, Recreational Planning, Development, and Management Policies.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Emergency Wetlands Resources Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 71.1 et seq; 36 C.F.R. 291.9; 36 C.F.R. 327.23

**MANAGEMENT OPPORTUNITIES:** The Emergency Wetlands Resources Act amends this Act and requires states to consider wetlands in their SCORPs (16 U.S.C. 460l-8) States are to identify agencies and organizations involved in wetlands management, evaluate wetlands protection mechanisms, assess wetland resources, identify wetlands loss and degradation factors, and establish priorities for protection. There may be a potential for the ecosystem restoration projects implemented in the Civil Works program to contribute to or compliment the wetland priorities outlined in the SCORPs developed by the states.

# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

**LEGISLATIVE TITLE:** Reauthorization of and Amendments to the Magnuson Fishery Conservation and Management Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1801 et seq.

**OTHER TITLES AND POPULAR NAMES:** Magnuson Fishery Conservation and Management Act; Fishery Conservation Amendments of 1990.

**SUMMARY:** The purpose of this Act is to conserve and manage the fishery resources found off the coasts of the U.S., the anadromous species, and Continental Shelf fishery resources of the U.S. The Act promotes domestic commercial and recreational fishing under sound conservation management principles, and establishes standards for fishery conservation and management, and directs the Secretary of Commerce to establish advisory guidelines, based on the national standards, to assist the development of fishery management plans (16 U.S.C. 1851). The Act establishes eight Regional Fishery Management Councils, to prepare, monitor and revise fishery management plans, which will achieve and maintain the optimum yield from each fishery (16 U.S.C. 1852). The Secretary of Commerce has review and approval authority for the regional plans (16 U.S.C. 1854). Members of the Councils include the principal state officials with marine fishery management responsibility and expertise, the regional directors of the National Marine Fisheries Service, and individuals appointed by the Secretary of Commerce who are knowledgeable regarding the conservation, management, or the commercial or recreational harvest, of fishery resources of the geographical area. The Councils are to: 1) enable the states, fishing industry, consumer and environmental organizations, and any other interested parties to participate in, and advise on the establishment and administration of such plans; and 2) take into account the social and economic needs of the States (16 U.S.C. 1801). Each Council may comment on or make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or Federal agency that the Council feels may substantially affect the habitat of a fishery resource that is under its jurisdiction, or the habitat of an anadromous fishery under its jurisdiction (16 U.S.C. 1852).

**RESOURCES COVERED:** Fishery resources found off the coast of the U.S., anadromous species (defined as species of fish which spawn in fresh or estuarine waters of the U.S. and which migrate to ocean waters), and Continental Shelf fishery resources (Coelenterata (jellyfish), Crustacea, Mollusca, and Porifera (Sponges)).

**COMPLIANCE REQUIREMENTS:** Within 45 days after receiving a comment or recommendation from a regional Council, a Federal agency will provide a written detailed response to the Council regarding the matter raised and including, in the case of a comment or recommendation concerning any activity the Council views as likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction, description of the measures being considered by the agency for mitigating or offsetting the impacts of the activity on such habitat (16 U.S.C. 1852).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of the Commerce Department; Regional Management Councils (New England; Mid-Atlantic; South Atlantic; Caribbean; Gulf of Mexico; Pacific; North Pacific; Western Pacific)

**Process and Product:** The Secretary of Commerce develops advisory guidelines, and regulations for implementation of this Act, and evaluates the plans prepared by the Regional Councils. The eight Regional Management Councils prepare and submit fishery management plans, periodic

reports to the Secretary of Commerce, and provide comments or recommendations to state or Federal agencies regarding actions that may affect the habitat of resources in their jurisdiction.

**Timing/Schedule:** Agencies must respond in writing to comments or recommendations from a Council within 45 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** The Sustainable Fisheries Act, and the Federal Advisory Committee Act (5 U.S.C. App)

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Commerce (National Oceanic and Atmospheric Administration)

**Guidance Title:** Magnuson-Stevens Act Provisions; Essential Fish Habitat (published in the Federal Register January 2002, Vol. 67, No. 12, page 2343.

**Code of Federal Regulations Citation:** 50 C.F.R. 600-695, excluding Part 697.

**MANAGEMENT OPPORTUNITIES:** The Corps may be able to participate in opportunities to complement the fishery management plans through ecosystem restoration initiatives in the Civil Works program, and as part of participation in the Coastal America Initiative, and through participation in ongoing regional coordination and assistance efforts.

# MARINE MAMMAL PROTECTION ACT

**LEGISLATIVE TITLE:** Marine Mammal Protection Act of 1972

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1361 et seq, 1401-1407, 1538, 4107

**OTHER TITLES AND POPULAR NAMES:** Marine Mammal Act

**SUMMARY:** This Act establishes a moratorium on the taking and importation of marine mammals and marine mammal products, with exceptions for scientific research, allowable incidental taking, exemptions for subsistence activities by Alaskan natives and hardship exemptions (16 U.S.C. 1371).

**RESOURCES COVERED:** Wildlife; marine mammals that are: a) morphologically adapted to the marine environment (including sea otters and members of the order Sirenia, Pinnipedia and Cetacea), and b) primarily inhabit the marine environment (e.g., polar bears)

**COMPLIANCE REQUIREMENTS:** During preparation of the NEPA document, coordination with U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) will include the discussion of potential impacts to any species covered by this Act. USFWS will provide their comments in the form of a letter or as part of the Fish and Wildlife Coordination Act Report. NMFS will provide their comments in a letter. The concerns and/or recommendations of either agency must be addressed. All practicable efforts will be made to avoid taking of a marine mammal. If the taking of a marine mammal is unavoidable, then the responsible agency (USFWS or NMFS) will be contacted to begin the process of obtaining a permit for any take.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Interior (U.S. Fish and Wildlife Service) and/or Secretary of Commerce (National Marine Fisheries Service)

**Process:** See Compliance Requirements above.

**Product:** See Compliance Requirements above.

**Timing/Schedule:** It usually takes a minimum of a year to obtain a permit, if no additional studies are necessary. This lengthy time period is necessary because the issuance of a permit must be in the form of a regulation that must appear in the Federal Register and be coordinated with the Marine Mammal Commission, Committee of Scientific Advisors on Marine Mammals, and the public.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** The Endangered Species Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Marine Mammal Commission, Department of the Interior; National Oceanic and Atmospheric Administration

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None Identified.

**MANAGEMENT OPPORTUNITIES:** The Corps, while given no direct authority by this Act, may have opportunities to work in coordination with the USFWS or the NMFS to incorporate design elements into Civil Works projects that are beneficial to marine mammals (e.g., breakwater designed to incorporate areas for marine mammal haul out). Corps offices are encouraged to coordinate closely with the Marine Mammal Commission for exchange of technical information regarding marine mammals to avoid duplication of research (e.g. Hopper dredging, endangered Atlantic Right Whale design).

# MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

**LEGISLATIVE TITLE:** Marine Protection, Research, and Sanctuaries Act of 1972

**UNITED STATES CODE CITATION:** 33 U.S.C. §§ 1401- 1445; 16 U.S.C. §§ 1431 et seq; also 33 U.S.C. 1271

**OTHER TITLES AND POPULAR NAMES:** Ocean Dumping Act; MPRSA

**SUMMARY:** The Act regulates the dumping of materials into ocean waters. It prevents, or restricts, dumping of materials that would degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Act provides for a permitting process to control the ocean dumping of dredged material. The Act also establishes the marine sanctuaries program, which designates certain areas of the ocean waters as sanctuaries in order to preserve or restore these areas for their conservation, recreational, ecological, or aesthetic values.

Section 102 (33 U.S.C. 1412) authorizes the Administrator of the Environmental Protection Agency (EPA) to promulgate the ocean dumping criteria, to designate recommended ocean disposal sites, and to issue permits for dumping of materials into ocean waters (except for dredged material, which is regulated by the Corps). Section 103 (33 U.S.C. 1413) authorizes the Secretary of the Army to issue permits for the transportation and disposal of dredged material in ocean waters. The disposal must meet the criteria established by the EPA (40 C.F.R. 227 & 228).

Section 302 (16 U.S.C. 1433) of the Act authorizes the Secretary of Commerce to designate areas as marine sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values.

Title V of the Water Resources Development Act of 1992 (WRDA 92), National Contaminated Sediment Assessment and Management Act (33 U.S.C. 1271) establishes a National Contaminated Sediment Assessment and Management program, and amends a number of sections of the MPRSA.

Section 502(a) (33 U.S.C. 1271) establishes a National Contaminated Sediment Task Force to advise the Secretary of Army and EPA Administrator on implementation of Title V; review reports, programs and pollutants selected for criteria; advise and make recommendations on guidelines and prevention and control measures; and review and advise on means and methods to locate long-term disposal sites. The Administrator and Secretary co-chair the Task force whose membership also includes the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Geological Survey and the Department of Agriculture. Provisions are made for clerical and technical assistance and compensation of non-Federal members, and the Task Force is directed to provide a report to Congress within two years on findings and recommendations.

The Administrator is directed to conduct a comprehensive survey of aquatic sediment quality in the US, including potential sources of pollution, and within 24 months of enactment to report to Congress on findings with recommendations to prevent contamination. The EPA is also directed to conduct a comprehensive and continuing monitoring program to assess aquatic sediment quality. The monitoring program includes location and extent of pollution; methods and protocols for monitoring; system for data management; assessment of trends over time; identify locations of where pollutants may pose threats to specific resources; establish clearinghouse for information; and, provide a report to Congress on findings within two years.

Section 504(a) amends Sections 103 (c) and (e) of the MPRSA of 1972 (33 U.S.C. 1413(c)) to set procedures and time limits for the Administrator to review and concur with conditions, or nonconcur with a proposed permit by the Secretary for sediment disposal. The permit cannot be issued if a "nonconcur"

is issued. If a "concur with conditions" determination is made, the permit issued has to include the specific conditions and require compliance.

Section 505 amends Section 106(d) of the MPRSA of 1972 (33 U.S.C. 1416(d)) to define the applicability of State rules and establish an exception for Federal projects.

The Administrator is directed to designate sites or time periods for dumping, and in conjunction with Secretary, to develop a site management plan for each designated site and describe what should be included in plan and periodic review time frames (33 U.S.C. 1412(c)). A deadline of 1 January 1997 is established for development of management plans at all sites. These amendments also establish a basis for selection and time limits on use of "alternative" disposal sites, designated by the Secretary (33 U.S.C. 1413(b)), provide provisions to ensure consistency with site management plans as part of permit conditions, and to set a time limit of 7 years for permits (33 U.S.C. 141(a)(4)), and establish criminal penalties for violation of provisions and authorize seizure and forfeiture of vessels involved in violation (33 U.S.C. 1415(b)).

Existing reports required to Congress will include a description of permits issued under this title, including number of permits issued with concurrence of EPA, as well as, actions taken for each permit, and descriptive information on permitted site, material disposed and management practices implemented (33 U.S.C. 1412)

The National Marine Sanctuaries Amendments Act of 2000 (16 U.S.C. 1431) broadens the criteria and functions of the National Marine Sanctuary System by adding the qualities of historical, cultural, archeological, scientific, and educational to the list of criteria for establishment of a national marine sanctuary. It also expands the purposes of such sanctuaries by stating that they will "(A) improve the conservation, understanding, management, and wise and sustainable use of marine resources; (B) enhance public awareness, understanding, and appreciation of the marine environment; and (C) maintain for future generations the habitat and ecological services of the natural assemblage of living resources that inhabit these areas." Section 309 of the Act authorizes programs to "develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources."

**RESOURCES COVERED:** Marine resources in ocean waters.

**COMPLIANCE REQUIREMENTS:** For projects involving transportation of dredged material through the territorial sea for the purpose of ocean disposal, or involving dredged material disposal within the territorial seas for the primary purpose of disposal, the discharge will be evaluated under Section 103 of the MPRSA. The disposal must meet the criteria established by the EPA (40 C.F.R. 227 and 228). Procedures for evaluating the potential contaminant-related impacts of disposing dredged material in the ocean are contained in the "Evaluation of Dredged Material Proposed for Ocean Disposal -Testing Manual" (EPA/COE-503/8-91/001). The Corps will generally utilize ocean disposal sites designated by the EPA to the maximum extent practical. Where no EPA designated site is available, the Corps may select a suitable ocean disposal site or sites using procedures and outlined criteria in 40 C.F.R. 228.4(e), 228.5 and 228.6. Potential ocean disposal sites will be specified in feasibility reports and, to the fullest extent practicable, the Section 103 evaluation will be completed during the feasibility study. (ER 1105-2-100). Efforts are currently underway to develop joint guidance between the Corps and EPA on site management plans and monitoring pursuant to 33 U.S.C. 1271 et seq.

Activities in sanctuary areas may be authorized only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act and can be carried out within in the regulations for the sanctuary.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), National Oceanic and Atmospheric Administration (NOAA), States (if within State's jurisdiction). With a few exceptions, states normally have control over the sea out to the three mile limit.

**Process and Product:** EPA is responsible for issuing permits for the disposal of non-dredged materials in ocean waters. The Corps is responsible for issuing permits for the transportation and disposal of dredged material for disposal in ocean waters. The Corps shall apply the same testing criteria for the issuance of permits as EPA, and will issue permits in consultation with EPA and with any State having jurisdiction over the disposal site.

**Timing/Schedule:** Permits issued under this Act are limited to 7 years.

## CORPS GUIDANCE:

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches (CECW-PA/CECW-PE); Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds (CECW-PA/OE); ER 1130-2-307, Dredging Policies and Practices; ; ER 1130-2-520, Navigation and Dredging Operations and maintenance Policies; EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans. CECW Memorandum dated 19 January 2000, Special Emphasis given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies.

**Civil Works Construction:** Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices; and ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies

**Civil Works Operations:** Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices; EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans.; ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies.

**Regulatory:** 33 C.F.R. 209, 335, 336, 337, and 338, Final Rule for O&M of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material into Waters of the U.S. or Ocean Waters; Regulatory Guidance Letter 83-3, Section 103 versus Section 404 in the Territorial Seas, 28 February 1983; 33 C.F.R. 320, 322, 324-327, 330; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991. EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans. CECW Memorandum dated 19 January 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**FOR MORE INFORMATION SEE:** Clean Water Act, Water Resources Development Act of 1992

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** Guidance Manual: Bedded Sediment Bioaccumulation Tests September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991

**Code of Federal Regulations Citation:** 40 C.F.R. 220-228. 33 C.F.R. 209, 320, 322, 324-327, 330, 335, 336, 337, and 338, Final Rule for Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material into Waters of the U.S. or Ocean Waters.

**MANAGEMENT OPPORTUNITIES:** Protection of marine resources, research on impacts and disposal management practices, management of disposal sites and disposal methods are part of the Corps responsibilities for stewardship of marine resources. The Corps can utilize appropriate opportunities to support the goals of this Act as part of Civil Works initiatives. The results of the research authorized in the Amendments of 2000 on methods to enhance degraded habitats and restore damaged, injured, or lost sanctuary resources may have application in the Corps Ecosystem Restoration program.

# MIGRATORY BIRD CONSERVATION ACT

**LEGISLATIVE TITLE:** Migratory Bird Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 715 to 715s

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes the Migratory Bird Conservation Commission (MBCC) consisting of the Secretary of the Interior, Secretary of Agriculture, two members of the Senate, and two members of the House of Representatives (16 U.S.C. 715a). The committee is authorized to consider the purchase or rental of land, water or transitional area where the Secretary of Interior has determined that such an area is necessary for the conservation of migratory birds (sanctuaries, preservations, refuges), and where he has consulted with the county or local government, and the Governor of the State where the property is located (16 U.S.C. 715c). The Migratory Bird Conservation Fund is established to acquire lands for conservation, to maintain acquired lands for habitat preservation, and for any expenses necessary for the administration development, and maintenance of such areas including construction of dams, dikes, ditches, spillways, and flumes for improving habitat, and mitigating pollution threats to waterfowl and migratory birds (16 U.S.C. 715k). No lands acquired, held, or used by the United States for military purposes is subject to any provision of this Act (16 U.S.C. 715d).

**RESOURCES COVERED:** Migratory birds, waterfowl, and associated habitat

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Interior, Migratory Bird Conservation Commission, States, Local governments

**Process:** Not specified

**Product:** Properties purchased, rented, leased for the purposes of this Act.

**Timing/Schedule:** Not specified

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of the Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** There may be opportunity for the Corps to assist the Secretary of Interior through a Cooperative Agreement with restoration of important waterfowl habitat through the Support-for-Others program.

# NATIONAL ENVIRONMENTAL POLICY ACT

**LEGISLATIVE TITLE:** National Environmental Policy Act of 1969

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 4321- 4347

**OTHER TITLES AND POPULAR NAMES:** NEPA; also mistakenly called the National Environmental “Protection” Act.

**SUMMARY:** The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. The Act declares it a national policy to “encourage productive and enjoyable harmony between man and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation” (42 U.S.C. 4321). The profound impacts of man’s activities “on the interrelations of all components of the natural environment” are recognized (e.g., urbanization, population growth, industrial expansion, resource exploitation) (42 U.S.C. 4331). The Act specifically declares a “continuing policy of the Federal Government, in cooperation with State and local governments, and other public and private organizations to use all practicable means and measures ... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (42 U.S.C. 4331).

The Act also states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of National policy, to improve and coordinate Federal plans, functions, programs, and resources to, among other things: assure safe, healthful, productive and esthetically and culturally pleasing surroundings for all Americans; attain the widest beneficial use of the environment without degradation, risk to health or safety; preserve important historic, cultural and natural aspects of our national heritage; achieve balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and, enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources (42 U.S.C. 4331).

The Act authorized and directed “that, to the fullest extent possible, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies of the Act”, and imposes general and specific requirements on all Federal agencies (42 U.S.C. 4332).

Agencies are required to “utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making...”. They are also to ensure that “unquantified environmental amenities and values may be give appropriate consideration in decision making along with economic and technical considerations” (Section 102(2)(A)) (42 U.S.C. 4332 (2)(A)).

Section 102(2)(C) (42 U.S.C. 4332) requires that every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, include a statement on: the environmental impacts of the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Agencies responsible for the action shall consult with and obtain comments from other agencies with jurisdiction by law or special expertise, with response to any environmental impact.

NEPA also establishes the Council on Environmental Quality (CEQ), in the Executive Office of the President (42 U.S.C. 4341). The Council advises and assists the President in providing leadership in protecting and enhancing the quality of the Nation's environment. It develops and evaluates Federal policies and activities on environmental quality. One of CEQ's primary functions in relation to water resources is the preparation of regulations concerning the development of environmental impact statements developed by the Corps and other agencies. The Office of Environmental Quality (OEQ), which was established in 1970, by the Environmental Quality Improvement Act, (P.L. 91-224) (42 U.S.C. 4371 et seq), provides staff for the Council.

**RESOURCES COVERED:** The quality of the historic, cultural and natural aspects of the human environment in general; the natural and physical environment and the relationship of people with that environment.

**COMPLIANCE REQUIREMENTS:** NEPA requires that a detailed statement accompany every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The Corps of Engineers normally prepares EISs for feasibility reports for authorization and construction of major projects, for changes in projects which increase size substantially or incorporate additional purposes, and for major changes in the operation and/or maintenance of completed projects. Environmental assessments are normally prepared for other Corps actions except for certain minor and/or routine actions which are categorically excluded from NEPA documentation. A finding of no significant impact is prepared by the reporting officer to accompany an assessment when it is determined that an EIS will not be prepared. NEPA documentation is accomplished prior to implementation of emergency work, if practicable. (ER 200-2-2)

**Notice of Intent.** A notice of intent to prepare a draft EIS is published in the Federal Register as soon as practicable after reporting officers decide to prepare a draft EIS (ER 200-2-2). **Record of Decision.** A Record of Decision is prepared to document the Corps final decision on a proposed action requiring an EIS. The Record of Decision identifies the reasonable alternatives; designates the environmentally preferable alternative or alternatives and the agency's preferred alternative; the relevant factors including economic and technical considerations, statutory missions, and national policy which were balanced to make the decision; and whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not. (ER 200-2-2)

The Council on Environmental Quality developed Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act (40 C.F.R. 1500-1508). Part 1500, Sec 1500.1(b) of this guidance requires that provisions must be made to insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. Section 1506.6 provides requirements for public involvement, requiring that ... agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA

procedures. These regulation go on to mandate that the general public be involved in scoping of the project, and be invited to comment after release of the draft EIS and the final EIS and responses to those comments are provided.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Federal agencies, State and local agencies, Indian tribes, applicants, the public.

**Process and Product:** Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI); or, Environmental Impact Statement (EIS) and a Record of Decision (ROD).

The Council on Environmental Quality (CEQ) regulations implementing the provisions of NEPA (40 C.F.R. 1500-1508) require the Federal agency having primary responsibility for preparing an environmental impact statement (EIS) to determine whether any other Federal agencies have jurisdiction by law, a statutorily mandated consultative role, or special expertise on environmental quality issues. "Jurisdiction by law" is defined as authority to approve, deny, or finance all or part of a proposal, and encompasses permits and licenses. "Special expertise" is defined as statutory responsibility, agency mission or related program experience. Appendix II of CEQ regulations lists Federal agencies so defined. The Corps review of another agency's EIS should be specific and may address either the adequacy of the EIS or the merits of the alternatives, or both, where the Corps has jurisdiction by law (Section 10, Section 404, etc.) or special expertise (flood control, navigation, water supply, etc.). District Engineers are designated as responsible NEPA officials for providing comments on other agencies EIS's except proposals requiring HQUSACE or ASA(CW) review (ER 200-2-2).

**Timing/Schedule:** Minimum 45-day review of draft statement; no Federal decision until at least 90 days after draft notice and 30 days after final notice is published in the Federal Register.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 200-2-2, Procedures for Implementing NEPA (also published as 33 C.F.R. 230); ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Policy Guidance Letter No. 29, Expenditures on Aesthetics at Civil Works Projects.

**Civil Works Engineering:** ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100 Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222.

**Civil Works Construction:** ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Regulatory:** 33 C.F.R. 320, 325 (Appendix B)

**FOR MORE INFORMATION SEE:** 40 C.F.R. 1500-1508; 45 FR 57488-57514, NEPA Implementation Procedures, Appendix I (Federal Agency NEPA Contacts) and Appendix II (Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues; Council on Environmental Quality, 28 August 1980; 46 FR 18026-18038, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, Council on Environmental Quality, 23 March 1981.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Council on Environmental Quality (CEQ). One of CEQ's primary functions in relation to water resources is the preparation of regulations concerning the development of environmental impact statements developed by the Corps and other agencies.

**Guidance Title:** Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

**Code of Federal Regulations Citation:** CEQ regulations on implementation of the procedural provision of NEPA are presented in 40 C.F.R. 1500-1508.

**MANAGEMENT OPPORTUNITIES:** The policy declared as by NEPA: encourages productive and enjoyable harmony between man and the environment; promotes efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and encourages enrichment of the understanding of the ecological systems and natural resources important to the Nation (42 U.S.C. 4321). In addition to complying with the procedural aspects of the Act, there may be opportunities to contribute to the policy established by NEPA in carrying out the numerous programs and activities within the Civil Works program.

# NATIONAL HISTORIC PRESERVATION ACT

**LEGISLATIVE TITLE:** National Historic Preservation Act of 1966

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 470 et seq

**OTHER TITLES AND POPULAR NAMES:** National Historic Preservation Act; NHPA

**SUMMARY:** The Act establishes preservation as a national policy and directs the Federal government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Preservation is defined as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or engineering. The Act authorizes the Secretary of the Interior to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture, referred to as the National Register. Also establishes the Advisory Council on Historic Preservation composed of 29 members, one of which is the Secretary of Defense 19 members. The Secretary of Defense is an observer on this Council.

The 1980 amendments established guidelines for nationally significant properties, curation of artifacts, and data documentation of historic properties, and preservation of Federally owned historic sites; required designation of a Preservation Officer in each Federal Agency; authorized the inclusion of historic preservation costs in project planning costs; and, authorized the withholding of sensitive data on historic properties when necessary. Federal agencies are directed to maintain historic properties in ways that consider the preservation of historic, archeological, architectural, and cultural values. Federal historic preservation programs shall insure that the preservation of properties not under the jurisdiction or control of agencies, but subject to be potentially affected by agency actions, are given full consideration in planning.

**RESOURCES COVERED:** Historic and cultural properties; Any prehistoric, and/or historic district, site, building, monument, deposit, structure, or object, listed in or determined eligible for listing in the National Register of Historic Places.

**COMPLIANCE REQUIREMENTS:** Federal agencies having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. Federal agencies shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on each undertaking (Section 106 (16 U.S.C. 470f). In addition, Federal agencies shall assume responsibility for the preservation of historic properties that are owned or controlled by the agencies. They also shall establish a program to locate, inventory and nominate all properties under the agency's ownership or control that are eligible for inclusion on the National Register (Section 110(16 U.S.C. 470h-2)).

The Corps must be able to document compliance with the Act by including relevant coordination or consultation correspondence, study results, agency views and comments, and, if required, mitigation plans in Corps project reports and NEPA documents. The Corps must prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties. The Act requires Federal agencies to develop and implement professional qualification standards for Federal employees and contractors. A key requirement is that the Corps must ensure that tribal values are taken into account to the extent feasible and Native American and Native Hawaiian groups are authorized to establish their own culturally-specific criteria of significance.

Furthermore, these groups may develop their own Section 106 compliance process for resources

on lands under their jurisdiction. Compliance requirements for the Regulatory Program are found in 33 C.F.R. 320, 325, 325-Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Advisory Council on Historic Preservation; State Historic Preservation Officers; Tribal Historic Preservation Officers.

**Process:** Section 106 Review Process, directs Federal agencies, with direct or indirect jurisdiction over proposed Federal or Federally assisted undertakings, to take into account effects on historic properties, in accordance with regulations issued by the Advisory Council on Historic preservation, and in consultation with the Council and the State Historic Preservation Officer.

Section 110 requires Federal agencies to assume responsibility for the preservation of historic properties owned or controlled by them and requires them to locate, inventory, and nominate all properties that qualify for the National Register. Agencies shall exercise caution to assure that significant properties are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate.

**Product:** Consultation determination of significance (National Register Eligibility) and Effect - No Effect, No Adverse Effect, or Adverse Effect [may require studies, mitigation plan, and data recovery or architectural recording]

**Timing/Schedule:** Depending upon available information and the nature and significance of resources, effect determinations may take 30 days (i.e. a "no effect" determination) to over a year. Studies and significance and effect determinations should be completed during the feasibility phase. Mitigation is ordinarily done just prior to construction.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities [33 C.F.R. 336.1(c)(6)]

**Regulatory:** 33 C.F.R. 320, 325, 325-Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** Water Resources Development Act of 1986, Section 943 (33 U.S.C. 2303); Reclamation Projects Authorization and Adjustments Act of 1992 (16 U.S.C. 470h-2).

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Advisory Council on Historic Preservation

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 36 C.F.R. 800, Protection of Historic Properties (implementing regulation for the Section 106 and Section/110 processes)  
Revised implementing regulations at 36 CFR 800 were published in the Federal Register on December 12, 2000.

The Section 106 and Section 110 processes usually require application of these regulations:

- 36 C.F.R. 60, National Register of Historic Places
- 36 C.F.R. 63, Determination for eligibility for inclusion in the National Register of Historic Places
- 36 C.F.R. 78, provides a waiver of responsibility from these requirements in the event of a major natural disaster imminent threat to national security
- 36 C.F.R. 79, Curation of Federally Owned Archeological Collections

**MANAGEMENT OPPORTUNITIES:** As a Federal agency, the Corps has the opportunity to implement the Federal Government's policy of providing leadership in the preservation of the cultural resources of the United States. This can be done through the use of both financial and technical assistance and in partnership with the States, local governments, Indian tribes, and private organizations and individuals. In addition to implementing the goals of the Act as part of planning Civil Works projects, surveys are conducted and measures are implemented to protect sites and structures as part of the operation and maintenance of Corps projects.

## NATIONAL INVASIVE SPECIES ACT OF 1996

**LEGISLATIVE TITLE:** National Invasive Species Act of 1996

**UNITED STATES CODE CITATION:** 16 U.S.C. 4701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act reauthorizes and amends the Nonindigenous Aquatic Nuisance Prevention Control Act of 1990 (P.L. 101-646, 16 U.S.C. 4701 et seq). It includes a number of additional findings, including that once introduced, aquatic nuisance species are unintentionally transported and introduced into inland lakes and rivers by recreational boaters, commercial barge traffic and other pathways; preventative management measures are needed nationwide to prevent the further introduction and infestation of destructive species. The findings also state that nonindigenous species may compete with or prey upon native species of plants, fish, and wildlife, may carry diseases or parasites that affect native species, and may disrupt the aquatic environment and economy of affected nearshore area (16 U.S.C. 4701).

Membership on the Aquatic Nuisance Species Task Force, established under the 1990 Act (16 U.S.C. 4721) is expanded to include the Secretary of Agriculture. Representatives of the Chesapeake Bay Program and the San Francisco Bay-Delta Estuary Program are to be invited as ex officio members.

The Act reauthorizes and modifies a number of the ballast management programs and provisions identified in the Nonindigenous Aquatic Nuisance Prevention Control Act of 1990, and directs establishment of record keeping and reporting procedures and sampling techniques, and monitoring for compliance with guidelines. The Act directs the development and maintenance of a clearing house of national data on ballasting practices, compliance with the national ballast management guidelines, and other information. The Secretary of Defense is directed to implement a ballast water management program for seagoing vessels of the Department of Defense, and the Secretary of Transportation shall implement a ballast water management program for seagoing vessels of the Coast Guard.

The Act includes provisions for a Dispersal Barrier Demonstration initiative (16 U.S.C. 4722). The Act states that [t]he Assistant Secretary, in consultation with the Task Force, shall investigate and identify environmentally sound methods for preventing and reducing the dispersal of aquatic nuisance species between the Great Lakes-Saint Lawrence drainage and the Mississippi River drainage through the Chicago River Ship and Sanitary Canal, including any of those methods that could be incorporated into the operation or construction of the lock system of the Chicago River Ship and Sanitary Canal. A report is to be submitted to Congress that identifies the most promising methods identified to prevent and reduce the dispersal of aquatic nuisance species, and ways to incorporate those methods into ongoing operations of the Corps of Engineers that are conducted at the Chicago River Ship and Sanitary Canal.

**RESOURCES COVERED:** Mississippi River drainage; waters east and west of the Great Lakes in the 8 States that border the Great Lakes; the Chesapeake Bay; San Francisco Bay-Delta Estuary; Honolulu Harbor; Columbia River system; waters of the United States. Zebra mussels, ruffe, round goby, mitten crab, green crab, brown mussel, shellfish pathogens, and other nonindigenous species; eurasian watermilfoil, hydrilla, water hyacinth, water chestnut, and other nuisance aquatic vegetation species.

**COMPLIANCE REQUIREMENTS:** All vessels operating in waters of the United States that are equipped with ballast water tanks must comply with guidelines issued by the Secretary of Transportation.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of Transportation and the Aquatic Nuisance Species Task Force.

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Nonindigenous Aquatic Nuisance Prevention Control Act of 1990

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Chicago Sanitary and Ship Canal links the Great Lakes and Mississippi River Basins and provides access for aquatic nuisance species to the two basins. The Corps has formed a board of stakeholders to identify common goals, possible approaches and potential problems with operating a dispersal barrier demonstration project, should efforts authorized in the Act be funded. There may be opportunities for the Corps to form or participate on similar boards and committees elsewhere in the country that are attempting to address aquatic nuisance species issues. In addition, there may be opportunities to include objectives for management of aquatic nuisance species as part of watershed studies.

# NATIONAL TRAILS SYSTEM ACT

**LEGISLATIVE TITLE:** National Trails System Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1241 - 1251

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** This Act acknowledges the increasing popularity of outdoor recreation, the need to promote access to and enjoyment of outdoor areas of the Nation, both near urban areas and in more remote scenic areas. It establishes the National Trails System (NTS), composed of: recreation trails; scenic trails; historic trails; connecting or side trails; and uniform markers. National recreational trails provide for a variety of outdoor recreation uses in or reasonably accessible to urban areas. National historic trails generally follow original trails or routes of travel of national historical significance. They can include land and water components as well as historic artifacts. Connecting and side trails provide additional points of public access to national recreation, national historic or national scenic trails, or connections between such trails. Recreation and connecting and side trails can be established by the Secretary of Interior or the Secretary of Agriculture with the consent of the Federal Agency, State, or political subdivision with jurisdiction over the lands involved. National scenic trails are extended trails located to provide for the conservation and enjoyment of Nationally significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass. Scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river forest, and other areas, as well as landforms that exhibit significant characteristics of the physiographic regions of the Nation.

The Act establishes a number of National scenic trails (16 U.S.C. 1244), including the Appalachian National Scenic Trail, and the Pacific Crest National Scenic Trail, and includes provisions for administration and development of the NTS (16 U.S.C. 1246). The appropriate Secretary, in consultation with the heads of any other Federal agency administering the lands through which a trail may pass may issue regulations for the use, protection, management, and development of trail right-of-way.

**RESOURCES COVERED:** Natural resources; national recreation trails; scenic and historic areas.

**COMPLIANCE REQUIREMENTS:** The Corps must identify, evaluate, and coordinate with the National Park Service, or other appropriate agency, regarding any impacts to the NTS as a result of ongoing or proposed Civil Works activities.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior, Department of Agriculture

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** EM 1110-2-410, Design of Recreation Areas and Facilities- Access and Circulation, December 31, 1982

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior, National Park Service

**Guidance Title:** National Recreation Trails - Information and Application Procedures for Designation

**Code of Federal Regulations Citation:** 43 C.F.R. 8342, 8351 et seq.

**MANAGEMENT OPPORTUNITIES:** The Corps recognizes that the aesthetic attractiveness of scenic corridors available on project lands can be enhanced by incorporation of trails or trail systems. Accordingly, wherever warranted by current or potential public use of Corps water resource projects, consideration is given in planning to the incorporation of trails.

# NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

**LEGISLATIVE TITLE:** Native American Graves Protection and Repatriation Act

**UNITED STATES CODE CITATION:** 25 U.S.C. 3001 et seq

**OTHER TITLES AND POPULAR NAMES:** NAGPRA

**SUMMARY:** The Act provides for the protection of Native American and Native Hawaiian cultural items, and establishes a process for the authorized removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony from sites located on lands owned or controlled by the Federal Government. The Act also explains the transfer of ownership of cultural items to Native American or Native Hawaiian individuals (e.g., direct lineal or cultural descendants), organizations or tribes. It addresses the recovery, treatment, and repatriation of Native American and Native Hawaiian cultural items by Federal agencies and museums. In accordance with Section 3(c), (25 U.S.C. 3002) USACE Commands should not claim ownership or permanent control of specified cultural items discovered on Federal or tribal lands after 16 November 1990: 1) when lineal descendants are identified who claim human remains and associated funerary objects; 2) if the Native American tribe or Native Hawaiian organization with the closest affiliation presents a claim; or, 3) when the tribe or organization which aboriginally occupied the territory presents the strongest claim. (There may be instances in which the Corps may take temporary custody until ownership is determined.) The Act distinguishes between pre-enactment and post-enactment (November 16, 1990) resources. NAGPRA contains data gathering, reporting, consultation, and permitting provisions. The Corps interim guidance covers the basis for repatriation, the timing of repatriation, and how to handle competing claims for pre- and post-enactment covered resources. The emphasis of the Act is on consultation with Native American tribes and Native Hawaiian organizations to ensure that these entities play a major role in the treatment of specific cultural objects.

CECW-AO/CECW-PD/CECC 1995 Memorandum, Application of the Native American Graves Protection and Repatriation Act to Water Resources Development Activities, explains that NAGPRA does not apply to lands in which the Federal government has merely been provided access by a landowner and/or local sponsor, for water resources development studies or projects. However, as the Corps may accept ownership of cultural items it recovers, when they are voluntarily offered by a landowner and/or local sponsor, transferred items are subject to NAGPRA-like activities, at such time as the transfer of ownership is executed.

Section 208 of the Water Resources Development Act of 2000 (33 U.S.C. 2338) states that the Secretary of the Army may identify and set aside areas at civil works projects for the reburial of Native American remains that have been discovered on project land and have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law. This must be done in consultation with the affected Indian tribes. The remains may be recovered and reburied at Federal expense, and the area may be conveyed to the Indian tribe for use as a cemetery.

**RESOURCES COVERED:** Historic and cultural properties; cultural items, specifically, human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony.

## **COMPLIANCE REQUIREMENTS:**

- a. The Act directs the Corps to inventory holdings or collections of human remains and associated funerary items currently under their jurisdiction by the end of 1995. Inventories were

to contain item descriptions, cultural and geographical affiliation information, and a discussion of the circumstances surrounding acquisition of all "covered resources". Summaries, defined as general narratives describing the character and extent of collections, kinds of objects, locational data, circumstances of acquisition, and cultural affiliation, were to be prepared, for unassociated covered resources, within 3 years of enactment of the law. Summaries could be prepared, in lieu of item-by-item inventories.

b. Following completion of inventories and summaries, Commands should consult with Native American tribal governments, Native Hawaiian organizations, Alaskan Native Villages, and traditional religious leaders regarding repatriation of existing collections. Programmatic consultation is recommended with tribal organizations which routinely could claim affiliation with covered resources on Corps fee lands. Commands should not delay arranging for the transfer of cultural items, unless the items are an integral part of a specific or on-going scientific study, whose outcome is "of major benefit to the United States". In these instances, transfer should occur within 90 days of completion of studies.

c. In cases where unanticipated covered resources are encountered during construction, Commanders must cease undertakings or activities, in whole or in part, for at least 30 days, and make a reasonable effort to protect the items discovered.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior, Tribal governments, Native Hawaiian organizations, Alaskan Native Villages

**Process:** Identification of geographical and cultural affiliation of associated (with human remains) and unassociated covered resources; consultation prior to excavation and removal and repatriation; and, transfer/repatriation.

**Product:** Inventories, narrative summaries, permits, repatriation agreements

**Timing/Schedule:** Existing collections - inventories of associated covered resources within 5 years and summaries of unassociated covered resources within 3 years; Archeological Resource Protection Act (ARPA) permits for excavation and removal prior to undertaking new work; transfer/repatriation agreements as required as a result consultation, or within 90 days of completion of "specific scientific studies".

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. CECW-O/CECW-P, Interim Guidance for the Native American Graves Protection and Repatriation Act, Public Law 101-601, 5 June 1991. CECW-AO/CECW-PD/CECC 1995 Memorandum, Application of the Native American Graves Protection and Repatriation Act to Water Resources Development Activities. Planning Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes. CECW-PG Memorandum, 1 May, 2001, Initial Implementation Guidance for Section 208 of the Water Resources Development Act of 2000.

**Civil Works Engineering:** See planning

**Civil Works Construction:** See planning

**Civil Works Operations:** See planning; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, Chapter 6.

**Regulatory:** 33 C.F.R. 320 and 325, Appendix C: Processing of Department of the Army permits Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** None identified The Water Resources Development Act of 2000, Section 208.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** Uniform Guidance is pending, Native American Graves Protection and Repatriation Act Regulations

**Code of Federal Regulations Citation:** Title 43 - Public Lands: Interior, Subtitle A - Office of the Secretary of the Interior, Part 10 (Pending)

**MANAGEMENT OPPORTUNITIES:** Information acquired from ARPA inventories can also be incorporated into the curation management of Corps cultural resources collections. For this reason and to the extent possible, ARPA inventories should be conducted in such a manner so as to produce types of information which also can be used for curation purposes. The opportunity exists to acquire information basic to the needs of both NAGPRA and curation. This includes such items as insuring all objects are properly identified, labeled, and bagged along with identifying objects which are missing, damaged, or in need of stabilization.

# NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT

**LEGISLATIVE TITLE:** Neotropical Migratory Bird Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 6101, et seq.

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The purposes of the Act are to perpetuate healthy populations of neotropical migratory birds, assist in their conservation, and to foster international cooperation for conservation initiatives in the United States, Latin America, and the Caribbean. Conservation is defined as the use of methods and procedures necessary to bring a species of neotropical migratory bird to the point at which there are sufficient populations in the wild to ensure the long-term viability of the species. Among the conservation measures identified in the Act are: protection and management of neotropical migratory bird populations, maintenance, management, protection, and restoration of their habitat, research and monitoring, law enforcement, and community outreach and education. The Act authorizes the Secretary of the Interior to establish a program to provide financial assistance in the conservation of neotropical migratory birds and outlines information on applicants, project proposal content, reporting and cost sharing, and other aspects of managing programs initiated to implement this Act. Project proposals are to be submitted to the Secretary of the Interior, and the federal share of the cost of each project shall be not greater than 25%.

**RESOURCES COVERED:** Neotropical migratory birds, which winter in Latin America and the Caribbean, and their associated habitat.

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, Advisory Group consisting of individuals representing public and private organizations actively involved in the conservation of neotropical migratory birds.

**Process:** Advisory group shall conduct meetings open to the public, and make minutes available to the public.

**Product:** Healthy, viable populations of neotropical migratory birds.

**Timing:** Program is funded for five years; Secretary is required to submit progress report to Congress in October, 2002.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** There may be opportunity for the Corps to assist the Secretary of Interior through a Cooperative Agreement with restoration of important water related neotropical migratory bird habitat.

# NOISE CONTROL ACT OF 1972

**LEGISLATIVE TITLE:** Noise Control Act of 1972

**UNITED STATES CODE CITATION:** 42 U.S.C. 4901 to 4918

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes a national policy to promote an environment for all Americans free from noise that jeopardizes their health and welfare. To accomplish this, the Act establishes a means for the coordination of Federal research and activities in noise control, authorizes the establishment of Federal noise emissions standards for products distributed in commerce, and provides information to the public respecting the noise emission and noise reduction characteristics of such products (42 U.S.C. 4901). The Act authorizes and directs that Federal agencies, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in 42 U.S.C. 4901. Each department, agency, or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result in, the emission of noise shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise. Each Federal agency shall, upon request, furnish information to the Environmental Protection Agency (EPA) regarding the nature, scope, and results of the noise research and noise-control programs of that agency, and shall consult with EPA, as required, in prescribing standards or regulations respecting noise. Certified low-noise-emission products shall be acquired for use by the Federal Government in lieu of other products if the Administrator of General Services determines that reasonably priced, reliable substitutes exist (42 U.S.C. 4914). The Act includes provision for citizen suits (42 U.S.C. 4911(a)) whereby any person may commence civil action against the United States or any governmental instrumentality or agency who is alleged to be in violation of any noise control requirement.

**RESOURCES COVERED:** Environmental noise - intensity, duration and character of sounds from all sources

**COMPLIANCE REQUIREMENTS:** Each Federal agency is required to limit noise emissions to within compliance levels. The Corps is responsible for operating its facilities within compliance noise levels set forth in Federal regulations, and state and/or local laws. The Corps also may be required to investigate the purchase of alternative machinery or equipment that has been certified as "low-noise-emission" by the GSA.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency, General Services Administration, Department of Transportation, Federal Aviation Administration, State and local governments

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies,

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 40 C.F.R. 209-211

**MANAGEMENT OPPORTUNITIES:** None identified.

# NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT

**LEGISLATIVE TITLE:** Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990

**UNITED STATES CODE CITATION:** 16 U.S.C. 4701 et seq

**OTHER TITLES AND POPULAR NAMES:** Aquatic Nuisance Prevention and Control Act of 1990

**SUMMARY:** The purposes of this Act are to: (1) prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements; (2) coordinate and disseminate information on Federally conducted, funded or authorized research, on the prevention and control of the zebra mussel and other aquatic nuisance species; (3) develop and carry out control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; (4) understand and minimize economic and ecological impacts of established nonindigenous aquatic nuisance species; and (5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels.

The Act establishes an Aquatic Nuisance Species Task Force (16 U.S.C. 4721) to be co-chaired by the Director of the Fish and Wildlife Service, and the Under Secretary of Commerce for Oceans and Atmosphere. Membership includes the Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, the Assistant Secretary of the Army (Civil Works), and the head of any other Federal agency that the chairpersons deem appropriate. Representatives of the Great Lakes Commission and State agencies and other governmental entities may be invited to be ex officio members of the Task Force. A memorandum of understanding was authorized to describe the role of each in jointly carrying out provisions of the Act. The Act encourages consultation with the Government of Canada to develop an effective international program for preventing the introduction and spread of aquatic nuisance species in the Great Lakes from vessel ballast waters.

A number of studies are authorized by the Act: 1) a ballast exchange study to assess the environmental effects of ballast water exchange on the diversity and abundance of native species in receiving waters, and other purposes; 2) a biological study to determine whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the U.S. other than the Great Lakes; and, 3) a shipping study to determine the need for controls on vessels entering waters of the U.S., other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of aquatic nuisance species in those waters (16 U.S.C. 4712). The Act directs the Coast Guard to issue guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water (16 U.S.C. 4711), in consultation with the Aquatic Nuisance Species Task Force.

The Act directs the Task Force to develop and implement a program to prevent introduction and dispersal of aquatic nuisance species, to monitor, control and study such species, and to disseminate related information (16 U.S.C. 4722). The Assistant Secretary of the Army (Civil Works), is directed to develop a program of research and technology development for controlling zebra mussels in and around public facilities, and to collect and make available, information pertaining to such control methods. The Act states that the Assistant Secretary [for Civil Works] will review proposed public facility management plans for requirements to reduce infestations of zebra mussels, and approve them if they meet the requirements specified in the Act (16 U.S.C. 4724).

**RESOURCES COVERED:** Waters of the Great Lakes (defined as Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels. Nonindigenous species, defined as any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organisms transferred from one country to another (16 U.S.C. 4702).

**COMPLIANCE REQUIREMENTS:** All vessels operating in waters of the Great Lakes that are equipped with ballast water tanks must comply with guidelines issued pursuant to this Act.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** The Secretary of Transportation and the Aquatic Nuisance Species Task Force.

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** National Invasive Species Act of 1996

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Corps established the Zebra Mussel Research Program in 1992 to address the control of zebra mussels, and make available information pertaining to control methods. There may be opportunities for Civil Works studies and activities in and around the waters of the Great Lakes (see "Resources Covered" above), to foster the goals of this Act through consideration of information derived from the research program and contained in State Aquatic Nuisance Species Management Plans.

# NORTH AMERICAN WETLANDS CONSERVATION ACT

**LEGISLATIVE TITLE:** North American Wetlands Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 4401 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** The Act is designed to encourage partnerships among public agencies and other interests to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife. Emphasis is on maintenance and improved distributions of migratory bird populations and North American waterfowl. The Act establishes the North American Wetlands Conservation Council (16 U.S.C. 4403) (NAWCC) to recommend wetlands conservation projects to the Migratory Bird Conservation Commission (MBCC)(16 U.S.C. 715a). In recommending such projects, consideration is given to availability of non-Federal matching funds, partnerships among public agencies and private entities, consistency with the National Wetlands Priority conservation plan (16 U.S.C. 3921), conservation of migratory nongame birds, other fish and wildlife, and species that are listed, or are candidates for listing, as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.)

Section 9 of the Act (16 U.S.C. 4408) addresses the restoration, management, and protection of wetlands and habitat for migratory birds on Federal lands. Federal agencies acquiring, managing, or disposing of Federal lands and waters are to cooperate with the Fish and Wildlife Service to restore, protect, and enhance wetland ecosystems and other habitats for migratory birds, fish and wildlife on their lands, to the extent consistent with their missions and statutory authorities.

The Fish and Wildlife Service is authorized to enter into cooperative agreements and grants with public and private agencies, organizations, institutions and individuals to implement the Act on a public-private cost- shared basis. The non-Federal share of contributions to the costs of projects undertaken pursuant to this Act may not be derived from Federal grant programs (16 U.S.C. 4407b).

**RESOURCES COVERED:** wetlands, wetland ecosystems, migratory birds, waterfowl, fish and wildlife.

**COMPLIANCE REQUIREMENTS:** The Corps should manage projects to enhance wetland habitat for waterfowl, whenever possible and practicable.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Fish & Wildlife Service, North American Wetlands Conservation Council

**Process and Product:** NAWCC submits wetlands conservation projects to the Migratory Bird Conservation Commission for joint review and consideration of those projects which should be pursued. Secretary of Interior is responsible for submitting an annual report to Congress on estimated number of acres of wetlands and habitat restored, trends in populations size of migratory birds and waterfowl, status of efforts to establish cooperative agreements for wetland habitat projects, and status of ongoing or in-progress projects.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE:**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Fish and Wildlife Conservation Act; Migratory Bird Conservation Act; Emergency Wetland Resources Act; Endangered Species Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Fish and Wildlife Service

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to contribute to the goals of this Act through Section 1135 projects or as part of other ecosystem restoration initiatives. In addition, there may be opportunities to support the goals of this Act through Civil Works stewardship initiatives undertaken as part of Natural Resource Management programs.

## OIL POLLUTION ACT OF 1990

**LEGISLATIVE TITLE:** Oil Pollution Act of 1990

**UNITED STATES CODE CITATION:** 33 U.S. Code 2701-2761 et seq

**OTHER TITLES AND POPULAR NAMES:** OPA, Great Lakes Oil Pollution Research and Development Act

**SUMMARY:** Spurred by the March 1989 Exxon Valdez oil spill and other large spills occurring within months of that catastrophe, the Oil Pollution Act of 1990 (Public Law 301-308) represents the culmination of 15 years of congressional efforts to reach a consensus on comprehensive Federal oil spill legislation. The Act has six major provisions: an expanded Federal role in oil-spill response, contingency planning requirements for vessels and certain facilities, the establishment of the Oil Spill Liability Trust Fund, the increase of liability for spills of oil or hazardous substances from vessels and facilities, the requirements for double hulls on new tankers, and the requirements for increased research and development into spill response technologies.

**RESOURCES COVERED:** Oil and hazardous substances, damage to natural resources

**COMPLIANCE REQUIREMENTS:** Facility response plans may be required for vessels and on-shore facilities which, because of their locations, could reasonably be expected to cause “substantial harm” to the environment by discharging oil into or on navigable waters or adjoining shorelines. The regulations further discuss what facilities would be reasonably expected to cause substantial harm. Also Spill Prevention, Control and Countermeasures (SPCC), and/or Facility Response Plans may be required for certain facilities.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** US Coast Guard and the Environmental Protection Agency

**Process and Product:** Facility Response Plan, Spill Prevention, Control and Countermeasures (SPCC) Plan

**Timing/Schedule:** None specified

### CORPS GUIDANCE:

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Prior to the enactment of OPA, Federal oil spill liability law was embodied in four primary statutes: the Clean Water Act, the Outer Continental Shelf Lands Act, the Deepwater Port Act, and the Trans-Alaska Pipeline Authorization Act. OPA replaces this approach by

amending and expanding section 311 of the Clean Water Act, to create a comprehensive liability, compensation and prevention scheme under one statute.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** US Coast Guard and the Environmental Protection Agency

**Guidance Title:** Executive Order 12777, Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990; C.F.R. titles below.

**Code of Federal Regulations Citation:** 40 C.F.R. part 112: Oil Pollution Prevention; 33 C.F.R. Part 150 et seq.: Response Plans; 49 C.F.R. Part 106 et seq: Oil Spill Prevention and Response Plans; 15 C.F.R. 990; 33 C.F.R. 135; 33 C.F.R. 137.

**MANAGEMENT OPPORTUNITIES:** None identified.

# OUTER CONTINENTAL SHELF LANDS ACT

**LEGISLATIVE TITLE:** Outer Continental Shelf Lands Act

**UNITED STATES CODE CITATION:** 43 U.S.C. 1331 et seq; 43 U.S.C. 1801 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act establishes policy for the management and exploitation of oil and natural gas in the Outer Continental Shelf, and for protecting the marine and coastal environment, in part, by creating an oil spill liability fund. The authority for the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States is extended to artificial islands and fixed structures located on the outer continental shelf (43 U.S.C. 1333(e)). In addition, the Secretary of Interior may, by agreement, utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency for environmental studies or information for assessment of management of impacts on the environment or impacts on marine biota from pollution or large spills. Federal agencies must notify the Department of Interior regarding their activities that will have a direct and significant effect on the Outer Continental Shelf or its development (43 U.S.C. 1334(h)).

43 U.S.C. 1337(k) was amended by Public Law 103-426 by authorizing the Secretary of the Interior to negotiate agreements for the use of sand, gravel and shell resources from the Outer Continental Shelf for use in 1) shore protection, beach restoration or coastal wetlands restoration programs or projects undertaken by a Federal, State or local government entity, or 2) a construction project that is funded in whole or in part by or authorized by the Federal Government. The Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. The amendment requires any Federal agency proposing to make use of sand, gravel and shell resources under provisions of this Act to enter into an MOA with the Secretary concerning the potential use of those resources; and Secretary of the Interior to notify the House Committee on Merchant Marine and Fisheries, the House Committee on Natural Resources, and the Senate Committee on Energy and Natural Resources.

**RESOURCES COVERED:** Natural resources in the subsoil and seabed of the coastal zone; oil, gas and minerals; fish and wildlife.

**COMPLIANCE REQUIREMENTS:** The Department of Interior oversees Outer Continental Shelf resources, and the Corps must develop a memorandum of Agreement with the Minerals Management Agency for coastal projects that have borrow areas extending beyond the three-mile limit.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Interior (Minerals Management Agency)

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** 33 C.F.R 320 and 322

**FOR MORE INFORMATION SEE:** The Submerged Land Act

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior, Department of Energy

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** None identified.

## **POLLUTION PREVENTION ACT**

**LEGISLATIVE TITLE:** Pollution Prevention Act of 1990

**UNITED STATES CODE CITATION:** 42 U.S.C. 13101 et seq

**OTHER TITLES AND POPULAR NAMES:** PPA

**SUMMARY:** The Act establishes the policy that pollution should be prevented or reduced at its source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner (42 U.S.C. 1301(b)). The Environmental Protection Agency (EPA) is authorized to develop and implement a strategy for a multi-media approach to source reduction, and establish a standard method of measuring source reduction (42 U.S.C. 1303). The Act also authorizes grants to states for programs to promote the use of source reduction by businesses (42 U.S.C. 1304) and a Source Reduction Clearinghouse (42 U.S.C. 1305) to foster the exchange of information on source reduction techniques, and disseminate this information to businesses and provide technical assistance to businesses.

The Act required owners or operators of facilities required to file an annual toxic chemical release form under Emergency Planning and Community Right-to Know Act, Section 313 to also include with each annual filing a toxic source reduction and recycling report for the preceding calendar year. Not only did EO 12856 require Federal Agencies to comply with the provisions of EPCRA and file a Toxic Release Inventory (TRI) reports for those chemicals exceeding the threshold, it also requires Federal facilities to prepare pollution prevention plans.

**RESOURCES COVERED:** Hazardous substances, hazardous chemicals and extremely hazardous substances, toxic and radiological waste; toxic chemicals as described in 42 U.S.C. 11023.

**COMPLIANCE REQUIREMENTS:** Executive Order 12856, Federal Compliance with Right-to Know Laws and Pollution Prevention requirements, August 3, 1993, requires all executive agencies to comply with the PPA to the same extent as any private person. Each owner or operator of a facility required to file an annual toxic chemical release form under Section 313 of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) is required by the Pollution Prevention Act to also file a toxic source reduction and recycling report.

### **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** EPA

**Process:** See Emergency Planning and Community Right-to-Know Act

**Product:** None specified

**Timing/Schedule:** None specified

### **CORPS GUIDANCE:**

**Civil Works Planning:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; USACE Operated Facilities Environmental Compliance Guidance Letter No. 4, Spill Planning and Response Requirements. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statue.

**FOR MORE INFORMATION SEE:** EO 12856, Federal Compliance with Right-to Know Laws and Pollution Prevention requirements, August 3, 1993; EO 12872, Federal Acquisition, Recycling, and Waste Prevention, 22 Oct 1993; and EO 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** See Emergency Planning and Community Right-to-Know Act

**Code of Federal Regulations Citation:** See Emergency Planning and Community Right-to-Know Act.

**MANAGEMENT OPPORTUNITIES:** Opportunities include waste prevention and waste reduction through the use of acquisition controls, life cycle cost and analysis, process modifications, modification of contract and product specifications, recovery of spent or used material for recycling, and use of recycled materials.

## RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENTS ACT OF 1992

**LEGISLATIVE TITLE:** Reclamation Projects Authorization and Adjustments Act of 1992

**UNITED STATES CODE CITATION:** 43 U.S.C. 390h-1 et seq; 16 U.S.C. 460l-31-460l-34; 16 U.S.C. 470a, et seq.

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act contains 40 titles; some of which are cited as individual acts. Most titles in this Act authorize initiatives for which the Secretary of the Interior is responsible, primarily through the Bureau of Reclamation. However, the Secretary is authorized collaborate with other Federal agencies as appropriate. Two titles of this Act amend other acts which are applicable to the Civil Works Program.

Title XXVIII (16 U.S.C. 460l-31 - 460l-34), known as the Reclamation Recreation Management Act, amends provisions of the Federal Water Project Recreation Act (P.L. 89-72). Section 2804 (16 U.S.C. 460l-32) amends P.L. 89-72 regarding cost sharing requirements for the provision of new recreation facilities, for recreation and fish and wildlife enhancement, and for the expansion or modification of existing recreation facilities. The requirement for the sponsor to assume 100 percent of operations, maintenance, and replacement costs is changed to "not less than one half the costs (16 U.S.C. 460l-13(a))." Although the original law was directed at the Bureau of Reclamation, these amendments extend to the Corps as well. Civil Works policy continues to require 100 percent non-Federal operations, maintenance, and replacement costs.

Title XL (16 U.S.C. 470a et seq, & 470 note) amends the National Historic Preservation Act (P.L. 89-665)(NHPA) by setting forth a review process for existing threats to properties on, or eligible for inclusion in, the National Register, and for periodic evaluation of State programs for consistency with the Act. Section 4006 (16 U.S.C. 470a) expands the Tribal Historic Preservation Programs to authorize the Secretary of Interior to assist Indian tribes in preserving their historic properties in consultation with the State Historic Preservation Officers through program management and grants. Section 4012 (16 U.S.C. 470h-2) addresses Federal Agency historic preservation programs and directs Federal Agencies with jurisdiction or control over historic properties listed or eligible for the National Register to manage and maintain these properties in such a way to reserve their historic, archaeological, architectural, and cultural value, and that such programs be carried out in consultation with Federal, State, and local agencies, including Indian tribes and Native Hawaiian organizations. Properties not under jurisdiction or control of a Federal agency, but may be potentially affected by an agency's actions, should also be given full consideration in the planning process as to the effects of the activity on the property. Section 4014 (16 U.S.C. 470h-4) amends the NHPA by establishing professional standards for personnel and contractors responsible for historic resources. Title XL also creates Title IV in the National Historic Preservation Act (16 U.S.C. 470x et seq.) to establish a National Center for Preservation Technology and Training to develop and distribute preservation and conservation skills and technologies, to develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel and others working in the preservation field, and for other purposes. The center is to be established within the Department of Interior, and located at Northwestern State University of Louisiana.

**RESOURCES COVERED:** recreation; fish and wildlife; historic and cultural resources.

**COMPLIANCE REQUIREMENTS:** Title XXVIII requires sponsor to contribute at least one half funding for recreation opportunities and allows for documentation in Corps reports and

NEPA documents that recreation opportunities were considered during the planning and design processes. Title XL requires that the Corps prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties to ensure that tribal values are taken into account to the extent feasible. Native American and Native Hawaiian groups are authorized to establish their own culturally-specific criteria of significance. Furthermore, these groups may develop their own Section 106 compliance process for resources on lands under their jurisdiction.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Department of Interior and states (Titles XXVIII and XL)

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Federal Water Project Recreation Act; National Historic Preservation Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** See National Historic Preservation Act.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** See National Historic Preservation Act.

**MANAGEMENT OPPORTUNITIES:** See the Federal Water Project Recreation Act, and the National Historic Preservation Act.

## RESERVOIR AREAS-FOREST COVER

**LEGISLATIVE TITLE:** Reservoir Areas-Forest Cover

**UNITED STATES CODE CITATION:** 16 U.S.C. 580m

**OTHER TITLES AND POPULAR NAMES:** Forest Conservation Act

**SUMMARY:** This Act establishes policy to provide that reservoir areas of projects for flood control, navigation, hydroelectric power development, and other related purposes owned in fee and under the jurisdiction of the Secretary of the Army and the Chief of Engineers be developed and maintained to encourage, promote, and assure adequate and dependable future resources of readily available timber, through sustainable yield programs, reforestation, and accepted conservation practices. The Act also provides for the increase in value of such areas for conservation, recreation, and other beneficial uses provided that such development and management are accomplished to the extent practicable and compatible with other uses of the project. The Chief of Engineers, under the supervision of the Secretary of the Army, is directed to provide for the protection and development of forest or other vegetative cover and the establishment and maintenance of other conservation measures on reservoirs under his jurisdiction, so as to yield the maximum benefit and otherwise improve such areas. Programs and policies developed pursuant to this Act shall be coordinated with the Secretary of Agriculture, and with appropriate State conservation agencies.

**RESOURCES COVERED:** Forests; forest cover; reservoir areas; timber.

**COMPLIANCE REQUIREMENTS:** Forest management programs are to be developed at Corps reservoir projects to increase the value of project lands for recreation and wildlife, and to promote natural ecological conditions by following accepted conservation practices. Where the preservation of natural conditions are the paramount consideration, there is no justification for using practices appropriate to commercial forestry production such as thinning, pruning and release cutting for stand improvement. Vegetation, living or dead, will be removed only with justification such as urgent disease control, urgent insect pest control, fire hazard reduction, wildlife management practice, removal for construction of recreational facilities or other specific essential uses (ER 1130-2-540).

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Agriculture; State conservation agencies

**Process:** None specified.

**Product:** Forest conservation programs in reservoir areas.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** The Act provides for management programs focusing on conservation and recreation, as well as a general category for “other beneficial uses”. Opportunities may exist for the Corps to apply ecosystem management and restoration programs to improve the forest resources associated with Civil Works reservoir projects. Forest management program development may present opportunities for collaborative efforts between the Corps and other resource agencies, where both are undertaking programs to address sustainable yield/sustainable development practices and incorporating the principals of ecosystem management.

# RESOURCE CONSERVATION AND RECOVERY ACT

**LEGISLATIVE TITLE:** Resource Conservation and Recovery Act of 1976

**UNITED STATES CODE CITATION:** 42 U.S.C. 6901 et seq

**OTHER TITLES AND POPULAR NAMES:** RCRA; Solid Waste Disposal Act; SWDA; Federal Facilities Compliance Act; FFCA

**SUMMARY:** This Federal law governs the disposal of solid waste. Subtitle D of the Act, as amended November 1984 (42 U.S.C. 6941-6949a), establishes Federal standards and requirements for state and regional solid waste authorities. The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources recovered from solid wastes.

Subtitle C of this law establishes standards and procedures for the handling, storage, treatment and disposal of hazardous wastes. The Act provides a "cradle to grave" approach to the regulation of solid and hazardous waste. Generators, transporters, and owners of treatment, storage, and disposal (TSD) facilities are subject to its regulatory scheme. RCRA also regulates the transportation and tracking of hazardous waste; establishes standards for the storage and treatment of hazardous wastes by generators; provides a procedure for identifying waste as hazardous; provides minimum technology standards for TSDs; provides for corrective actions for historic solid and hazardous waste management units; establishes land disposal prohibitions and restrictions; regulates the installation, testing, and removal and remediation of underground storage tanks; regulates the management of used oil; and provides an enforcement mechanism.

The Federal Facilities Compliance Act (FFCA) (P.L. 102-386, 106 STAT 1505) amended RCRA. The Act provides for a waiver of sovereign immunity with respect to Federal, state, and local procedural and substantive requirements relating to the Resource Conservation and Recovery Act (RCRA) solid and hazardous waste laws and regulations at Federal facilities (42 U.S.C. 6961). The Environmental Protection Agency is directed to make annual inspections of facilities owned or operated by the United States which treat, store, or dispose of hazardous waste to insure compliance with applicable regulations. Authorized States may also conduct inspections to insure compliance with authorized State hazardous waste programs (42 U.S.C. 6927(c)). Additionally, it defines hazardous waste in relation to public vessels, expands the definition of mixed waste, and discusses waste discharges to Federally owned treatment works.

**RESOURCES COVERED:** Solid waste; hazardous, and mixed wastes.

**COMPLIANCE REQUIREMENTS:** Federal and state laws pertaining to solid waste are applicable to Civil Works projects. Also, RCRA may impose substantial requirements on Corps projects that manage even small amounts of hazardous waste. A Corps project may be regulated as a generator and/or potentially as a storer of hazardous waste (e.g., waste solvents, waste pesticides, waste cleaning compounds, etc). Corps underground storage tanks may also be regulated under RCRA, Subtitle I. Other RCRA regulated activities may include, for example, disposal of construction debris such as cleaning solvents and paints containing lead and chromium, off-site disposal of contaminated dredge material, and maintenance activities, e.g., sandblasting debris containing lead or chromium.

The Federal Facility Compliance Act of 1992 (P.L. 102-386 (106 STAT 1505)) waived Federal sovereign immunity under Federal, state, and local laws relating to RCRA solid and hazardous waste laws and regulations for the payment of punitive and coercive fines, administrative orders

and injunctive relief, reasonable service charges and other nondiscriminatory fees. If any Corps facility generates hazardous waste, it is subject to all "Federal, state, interstate, and local or solid waste requirements, both substantive and procedural" (42 U.S.C. 6961). By Presidential Proclamation, fines are paid out of operating funds.

The EPA is required to undertake annual inspections of Federal facilities that treat, store, or disposed of hazardous wastes, and requires the Federal agency to reimburse EPA for the costs of the inspection. A state with an authorized state program may also inspect such facilities (42 U.S.C. 6927(c)). The states and EPA are able to charge fees for a wide range of activities, including inspection fees, and to assess penalties against Federal agencies. The Act also adds a provision under 42 U.S.C. 6939d, that "public vessels", vessels owned or operated by the US government, are essentially not subject to RCRA's storage, manifest, inspection, or record keeping requirements, and that the hazardous waste become regulated once they are transferred ashore. There are some exceptions.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Environmental Protection Agency (EPA), and state and local agencies if program has been approved by EPA. Most states are currently authorized to administer the solid waste programs as well as various parts of the hazardous waste program. States laws may be more stringent than Federal requirements and must be consulted when managing solid and hazardous wastes at a Civil Works project.

**Process:** All solid wastes generated will have to be managed in accordance with state and local solid waste regulations. If a Civil Works project is generating a solid waste that is a hazardous waste, the project must determine the appropriate generator status. The project will then determine generator status according to state or Federal hazardous waste regulations and manage the waste accordingly.

**Product:** For Civil Works projects covered under RCRA or state solid and hazardous waste regulations the applicable reporting and record keeping requirements of the regulations must be met.

**Timing/Schedule:** For hazardous wastes, Federal and state regulations contain specific time and quantity limitations for various types of generators, i.e. Large Quantity Generators, Small Quantity Generators, or Conditionally Exempted Small Quantity Generators. Application of the regulations is dependant upon your generator status.

## CORPS GUIDANCE\*

ER 385-1-92, Safety and Occupational Health Document Requirements Hazardous Waste Site Remedial Act.

AR 200-1 Environmental Protection and Enhancement (Draft)

DOD Directive 6050.8, Storage and Disposal of Non-DOD-Owned Hazardous or Toxic Materials on DOD Installations (2/27/86)

DODD 4165.60 Solid Waste Management; DODD 4145.19-1 Storage and Handling

USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; EM 1110-1-502 (Apr 94) Technical Guidelines for Hazardous and Toxic Waste Treatment and Cleanup Activities. USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities; ER 1110-1-263, Chemical Data Quality Management for Hazardous Waste and Remedial Activities. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Environmental Review Guide for Operations (ERGO, CECW-OA, January 1995). USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Regulatory:** None specific to this statute.

\* Due to the complexity and often times large financial concerns associated with RCRA issues, your Office of Counsel should be consulted regarding liability and compliance with RCRA. Also, given their experience with Formerly Used Defense Sites (FUDS), Base Realignment and Closure (BRAC), and Installation Restoration (IR), the Center For Expertise in Hazardous, Toxic and Radioactive Waste should be consulted regarding legal and technical matters.

**FOR MORE INFORMATION SEE:** The Solid Waste Disposal Act of 1965, was amended in its entirety by RCRA. The 1980 Amendments to the Solid Waste Disposal Act are cited at P.L. 96-482 (42 U.S.C. 6901 et seq). Federal Facility Compliance Act of 1992 (P.L. 102-386 (106 STAT 1505)); Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention, October 1993; Executive Order 12780, Federal Agency Recycling and the Council on Federal recycling and Procurement Policy, November 1991.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency. The RCRA waiver of sovereign immunity (42 U.S.C. 6961) includes state and local agency requirements that are not inconsistent with RCRA. Additionally, the Federal Facility Compliance Act of 1992 (PL 102-386) modified 42 U.S.C. 6961 by waiving Federal sovereign immunity from state enforcement of state solid and hazardous waste laws including payment of punitive or coercive fines, administrative orders and injunctive relief, reasonable service charges and other nondiscriminatory fees. If EPA approves a state RCRA program or a portion thereof, then the Federal facility must follow the applicable approved state regulations rather than the Federal rules. State law and state interpretation of that law may differ substantially from Federal RCRA regulations and EPA interpretation.

**Guidance Title:** A variety of EPA guidance manuals and other environmental publications are available through National Technical Information Service (NTIS) at 800-553-6847. EPA has a contractor operated RCRA/Superfund/UST Hotline, 800-424-9346 or 703-412-9810. Department of Transportation operates a transportation (49 C.F.R.) hotline, 202-366-4488. The US Army also operates an environmental response line, 1-800-872-3845.

FFCA: Enforcement Authorities Implementation; Hazardous Waste: Technical Revision for the FFCA of 1992 Amendments

**Code of Federal Regulations Citation:** 40 C.F.R. 240-280. For transportation of hazardous waste, also see the Hazardous Materials Transportation Act and Department of Transportation (DOT) regulations 49 C.F.R. 171-179. Federal Register Vol. 58, No. 181, page 49044, September 21, 1993; Federal Register Vol.60, No.55, page 15208, March 22, 1995.

**MANAGEMENT OPPORTUNITIES:** Acquisition Planning and Procurement: in developing work plans, specifications, or product descriptions, consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle costs; recyclability; use of environmentally preferable materials; and waste prevention. Hazardous waste management plans to address waste management procedures as well as waste minimization plans should be developed for Civil Works projects. Facilities should make sure that they are in compliance with Federal and state hazardous waste regulations. Facilities should also self audit through the ERGO program.

## RIVERS AND HARBORS ACTS

**LEGISLATIVE TITLE:** Rivers and Harbors Appropriation Act of 1899

**UNITED STATES CODE CITATION:** 33 U.S.C. 401, 403, 407

**OTHER TITLES AND POPULAR NAMES:** River and Harbors Act of 1899

**SUMMARY:** The Rivers and Harbors Acts address projects and activities in navigable waters and harbor and river improvements. Several of these Acts provided a number of regulatory authorities, the implementation of which has evolved over time. This profile addresses only those sections that relate to the Corps Regulatory program.

Section 9 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 401) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the water body lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that state, if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966.

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. This section provides that the construction of any structure in or over any navigable water of the United States, or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The Secretary's approval authority has since been delegated to the Chief of Engineers.

Section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency (EPA), and the states under Sections 402 and 405 of the Clean Water Act, respectively.

Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408) provides that the Secretary of the Army, on the recommendation of the Chief of Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

Section 7 of the Rivers and Harbors Act approved 8 August 1917 authorizes the Secretary of the Army to promulgate regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property or for operations of the United States in providing channel improvements. Procedures followed for promulgation of such regulations, although they do not involve issuance of permits, are similar to those for the permit program.(33 C.F.R. Part 324)

Danger Zones. Regulations can be prescribed for the use and navigation of any area likely to be endangered by Department of Defense operations. The authority to prescribe danger zone regulations is exercised so as not to interfere with or restrict unreasonably the commercial fishing industry. (33 C.F.R. Part 324)

Restricted Areas. When required for the protection of life and property at Department of Defense (DoD) installations, certain areas maybe set aside and reserved, such as naval restricted areas. Reasonable regulations may be prescribed, after public notice, restricting or prohibiting the use of such areas by vessels. The Coast Guard is authorized to establish restricted areas for safety but not restricted areas for DoD facilities. (33 C.F.R. Part 324)

Section 104 of the River and Harbor and Flood Control Act of 1958, as amended (33 U.S.C. 610), authorizes the Corps of Engineers, under the direction of the Secretary of the Army, to administer a comprehensive program to provide for control and progressive eradication of water-hyacinth, alligatorweed, Eurasian water milfoil, and other obnoxious aquatic plant growths, from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States. This program is to be carried out in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures. The program is to be implemented in cooperation with other Federal and State agencies. (See EP 1165-2-1, Digest of Water Resources Policies and Authorities, Chapter 20; and ER 1130-2-500, and EP 1130-2-500, Chapter 14).

**RESOURCES COVERED:** Shorelines and navigable waterways, dredged material transport and disposal; all tidal waters and /or waters that have been used, are currently used, or could be used to transport interstate or foreign commerce (33 C.F.R. 329.4).

**COMPLIANCE REQUIREMENTS:** Activities that involve the construction of dams, bridges, dikes etc. across any navigable water, or placing obstructions to navigation outside established Federal lines and excavating from or depositing material in such waters, require permits from the Corps. The Act prohibits the use of Federal funds for activities which would have adverse affect on those characteristics which caused a river to be classified as wild, scenic, or recreational.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Corps conducts public interest reviews to ensure that proposed projects comply with Section 10, and as part of these reviews coordinates with other Federal, State, and local agencies. Final determinations are made by the Corps after consideration of this information.

**Process:** See C.F.R.

**Product:** Permits for work in or affecting navigable waters.

**Timing/Schedule:** For Section 10 permits: if the permit application is complete, the Corps should issue a public notice within 15 days, allow a comment period of 15 to 30 days, address concerns and objections, and make a permit decision shortly thereafter (33 C.F.R. 325.2).

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** None specific to this statute.  
**Civil Works Construction:** None specific to this statute.  
**Civil Works Operations:** None specific to this statute.

**Regulatory:** 33 C.F.R. 320-331, Sections 9, 10 and 13.; CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.  
**Guidance Title:** None identified  
**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** None identified.

# SAFE DRINKING WATER ACT

**LEGISLATIVE TITLE:** Safe Drinking Water Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 300f et seq, 6939b; 15 U.S.C. 1261 et seq

**OTHER TITLES AND POPULAR NAMES:** SDWA

**SUMMARY:** The primary objective of the SWDA is twofold: (1) to protect the nation's sources of drinking water, and (2) to protect public health to the maximum extent possible, using proper water treatment techniques. The Act directs the EPA and states to establish national primary and secondary drinking water standards and to establish techniques to meet those standards. States are responsible for enforcement and must submit regulatory programs to the EPA for approval. Facilities that treat drinking water supplies are regulated by the states through permits. Underground sources of drinking water are also protected through applying the same drinking water standards, identifying critical aquifer protection areas, and programs to protect wellhead areas from contaminants. The Act also requires states to submit procedures for inspection, monitoring, record-keeping, and reporting, as part of their regulatory programs.

Section 1447 of the Act (42 U.S.C. 300j-6) requires that each Federal agency having jurisdiction over any Federally owned or maintained public water system or engaged in an activity resulting, or which may result in, underground injection that endangers drinking water shall be subject to, and comply with, Federal, State, and local requirements, programs, and administrative authorities.

**RESOURCES COVERED:** Public drinking water supplies; reservoirs; aquifers.

**COMPLIANCE REQUIREMENTS:** To comply with Section 1447 (42 U.S.C. 300j-6) the Corps must ensure that any facility in their jurisdiction that is used, or may be used, for public drinking water complies with the water requirements of the state in which the facility is located. Any Corps activities that may impact or endanger underground drinking water supplies are also subject to the requirements of the state program. The Corps is also subject to any permitting requirements from EPA and/or states for operating a drinking water facility or conducting activities affecting groundwater supplies.

In addition, Corps activities that may impact underground drinking water supplies must be reviewed and approved by the state agency designated to administer drinking water quality standards, and permits may be issued. Opportunities to plan and operate activities which are sensitive to such critical areas will have increased application in environmental mitigation or restoration projects.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency, States

**Process:** None specified.

**Product:** Any underground injection of wastewater must be authorized by a permit from EPA.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Clean Water Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** Safe Drinking Water Act Regulations (primary drinking water standards, state program implementation guidance, underground injection standards, controls, implementation guidance.

**Code of Federal Regulations Citation:** 40 C.F.R. 141-148.

**MANAGEMENT OPPORTUNITIES:** Among the provisions in the 1996 amendments to the Act is Title IV -- Additional Assistance for Water Infrastructure and Watersheds (42 U.S.C. 300j-3c). These provisions authorize the Administrator of EPA to provide technical and financial assistance to States (1) in the form of grants to States for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under Section 319 of the Federal Water Pollution Control Act, (33 U.S.C. 1329) (Nonpoint source management programs) for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems. There may be opportunities to contribute to the objectives of this authority through Corps watershed studies and other Civil Works studies. For example, there may be opportunities for the Corps to incorporate the some of the State point and nonpoint source management program goals as part of the considerations in watershed and comprehensive basin planning studies.

# SOIL AND WATER RESOURCES CONSERVATION ACT

**LEGISLATIVE TITLE:** Soil and Water Resources Conservation Act of 1977

**UNITED STATES CODE CITATION:** 16 U.S.C. 2001-2009

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act directs the Department of Agriculture to develop a National Soil and Water Conservation Program (SWCP), and to conduct an appraisal of the Nation's soil, water, and related resources at five year intervals (16 U.S.C. 2004-2005). The SWCP and the appraisals cover activities and resources under the jurisdiction of the Soil Conservation Service, now called the National Resources Conservation Service (NRCS). The appraisals involve compiling data on the quantity and quality of soil and water, State and Federal laws regarding development and use of these resources, and costs and benefits of alternative conservation techniques. The SWCP is developed to be a guide in carrying out activities of the NRCS, taking into account current and future needs of the Nation, landowners, and land users. The SWCP includes analyses of (1) the Nation's soil, water, and related resource problems, (2) ongoing Federal, State, and local programs addressing soil and water conservation (3) alternative methods for conservation, protection, improvement, or enhancement of soil and water resources (16 U.S.C. 2005). Analyses conducted by the Department of Agriculture, NRCS in carrying out the provisions of this Act are to be in conjunction with State soil and water conservation agencies, conservation districts, and appropriate citizen groups.

**RESOURCES COVERED:** Soil, water and related resources such as forestry, and fish and wildlife.

**COMPLIANCE REQUIREMENTS:** This Act imposes no requirements on Corps projects, however the Corps and the Natural Resource Conservation Service do coordinate their activities under interagency agreements. (See EP 1165-2-2, Interagency Agreements, November 1, 1979, Appendix B, and EP 1165-2-1, Digest of Water Resources Policies and Authorities, March 27, 1981, paragraphs 24-3, 25-55, 27-3(a), 27-3(d)).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Department of Agriculture, Natural Resources Conservation Service, State conservation districts, State soil and water conservation agencies

**Process:** Not specified

**Product:** Appraisal of the soil, water and related resources of the Nation

**Timing/Schedule:** Appraisals required every five years.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Agriculture

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** Authority for the Act is vested with the Secretary of Agriculture, however other Federal agencies (Corps) are encouraged to exchange Interagency Agreements as a tool for providing existing information and data exchange.

## SOLID WASTE DISPOSAL ACT

**LEGISLATIVE TITLE:** Solid Waste Disposal Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 3251 et seq, 6901 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The aim of the Act was to initiate national research and development programs for new and improved methods of disposal, with provisions for recovery and recycling. Technical and financial assistance was to be provided to state and local governments in the development of programs.

This Act was amended by the Resource Recovery Act of 1970 (Public Law 91-512) and later by the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq). Subtitle D, of RCRA, as last amended in November 1984 by 42 U.S.C. 69-41-6949a, established Federal standards and requirements for state and regional authorities respecting solid waste disposal. Current Federal requirements for solid waste management are found in RCRA, Subtitle D, Section 4001-4010 which is also referred to by its original name, the Solid Waste Disposal Act. The definition of "solid waste" is found in Subtitle A, Section 1004 of the Act. The requirements of the original Solid Waste Disposal Act of 1965 has for the most part been replaced by RCRA.

**RESOURCES COVERED:** Solid waste; garbage, refuse and other discarded solid waste materials, including solid waste material resulting from industrial, commercial, and agricultural operations, and from community activities (42 U.S.C. 3252 (4)).

**COMPLIANCE REQUIREMENTS:** Refer to Subtitle D of RCRA as amended and implementing regulations in 40 C.F.R. 240, 241, 243, 245, 246, and 258. Comply with Executive Order No. 12780 of October 31, 1991, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy and Executive Order No. 12873 of October 20, 1993, Federal Acquisition, Recycling, and Waste Prevention.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See Resource Conservation and Recovery Act

**Process and Product:** See Resource Conservation and Recovery Act

**Timing/Schedule:** See Resource Conservation and Recovery Act

### CORPS GUIDANCE:

**Civil Works Planning:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Memorandum, USACE, CECW-OA, 24 November 1992, subject: USACE Facilities Environmental Compliance Guidance Letter No. 1, Solid Waste Recycling.

**Regulatory:** None applicable.

**FOR MORE INFORMATION SEE:** Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq) and the Used Oil Recycling Act of 1980; Federal Facilities Compliance Act (42 U.S.C. 6901, et seq).

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Originally Secretary of Health, Education and Welfare, then Environmental Protection Agency after the passage of RCRA.

**Guidance Title:** See Resource Conservation and Recovery Act

**Code of Federal Regulations Citation:** Resource Conservation and Recovery Act

**MANAGEMENT OPPORTUNITIES:** The Corps may incorporate recycling initiatives into solid waste management programs for Civil Works projects, through acquisition planning and procurement actions use recovered and recycled materials. Beverage container management programs to reduce solid waste and litter will also support the goals of this Act. Work with supporting Defense Reutilization and Marketing Office (DRMO) to recycle solid wastes. Establish local recycling committees to manage solid waste such as cardboard, paper and other reusable post-consumer solid wastes. Work in concert with State and local solid waste reduction/recycling regulations and programs. Promote solid waste reduction and recycling in all phases of Civil Works activities.

## SUBMERGED LAND ACT

**LEGISLATIVE TITLE:** Submerged Land Act

**UNITED STATES CODE CITATION:** 10 U.S.C. 7421-7426, 7428-7438; 43 U.S.C. 1301-1303, 1311-1315

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes that seaward boundaries of original coastal states extend to three geographical miles from the coastline, and are therefore, under the jurisdiction of the States in which the submerged land is located. Section 3 (a)(2) (43 U.S.C. 1311(a)) confirms the rights of states to manage, develop, administer, and lease those resources on submerged lands, including any leasing arrangements to any organization public or private, including departments or agencies of the Federal Government. Section 6 (43 U.S.C. 1314) states that the United States retains all its navigational servitude and rights, and powers of regulation and control of lands and navigable waters for the purposes of commerce, navigation, national defense and international affairs. However, these rights are not deemed to include proprietary rights of ownership, rights of management, administration, use, and development of lands and natural resources. The Act places no restrictions on the use, development, improvement, or control of lands or waters for the purposes of navigation flood control, or the production of power.

**RESOURCES COVERED:** Coastal Zone, Natural Resources; Oil, gas, minerals, fish, and wildlife on lands beneath water.

**COMPLIANCE REQUIREMENTS:** This Act imposes no restrictions on Corps water resources projects. It places no restrictions on the use, development, improvement, or control of lands or waters for the purposes of navigation or flood control.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** None specified

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** Outer Continental Shelf Lands Act  
**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior, Minerals Management Agency  
(for areas outside the three-mile limit.)

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None applicable.

**MANAGEMENT OPPORTUNITIES:** None identified.

# **SURFACE MINING CONTROL AND RECLAMATION ACT**

**LEGISLATIVE TITLE:** Surface Mining Control and Reclamation Act of 1977

**UNITED STATES CODE CITATION:** 30 U.S.C. 1201 - 1328; 18 U.S.C. 1114

**OTHER TITLES AND POPULAR NAMES:** Surface Mining Reclamation Act

**SUMMARY:** This Act establishes a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, and to set forth reclamation guidelines for surface coal mining areas. Under Title V, Section 502 (30 U.S.C. 1253), States in which there are surface coal mining operations on non-Federal lands are directed to develop programs that provide for environmental regulations, establish permit programs, and provides for enforcement procedures for requirements of the state program. Any state which does not have a management program, approved by the Department of Interior, will be governed by the rules and regulations set forth in the Federal program, as developed by the Department of Interior. Similar programs are to be developed by the Department of Interior, in conjunction with the States, for surface mining operations on Federal lands (30 U.S.C. 1273).

Grants are provided for research in mining technology and the Abandoned Mine Reclamation fund is established (30 U.S.C. 1231) for the construction of water treatment facilities for pollution resulting from mine drainage. The Office of Surface Mining and Reclamation is established in the Department of Interior to enforce and administer this Act (30 U.S.C. 1211)

Environmental performance standards are required for permits issued to surface mining operations to maximize utilization and conservation of the resources recovered, and that future land disturbance from surface mining is minimized (30 U.S.C. 1265). The standards also include requirements for restoring the affected land (30 U.S.C. 1265), including surface area stabilization/erosion control, revegetation, creating impoundments for water quality, minimizing disturbance to original hydrologic balances, and proper disposal of mine waste products and other requirements. The Secretary of Interior and the Chief of Engineers, are to establish standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal and abandonment of new and existing coal mine waste piles when used as dams or embankments (30 U.S.C. 1265(f)).

**RESOURCES COVERED:** surface mines and adjacent lands; coal and other minerals; impoundments and other water and land resources affected by surface mining operations.

**COMPLIANCE REQUIREMENTS:** State programs must be adhered to, including appropriate permitting procedures, for any person or entity pursuing surface coal mining operations in the United States. However, 30 U.S.C. 1278 provides that extraction of coal as an incidental part of government financed highway or other construction (e.g., dam construction) is not subject to regulation under this Act.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Department of the Interior, States, other Federal agencies (as appropriate)

**Process:** None specified.

**Product:** Permit issued to surface mining operation stipulating environmental impacts, restoration/mitigation practices, environmental performance standards, and reclamation plans.

**Timing/Schedule:** Permits typically issued for 5 year increments.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 330

**FOR MORE INFORMATION SEE:** None identified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Office of Surface Mining and Reclamation, Department of the Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** Chapter VII of 30 C.F.R. (Sections 700-899)

**MANAGEMENT OPPORTUNITIES:** The Corps has opportunities to provide technical expertise (personnel) to the Secretary of Interior in developing technical standards and criteria for coal mine waste dams, or embankments. There also may be the potential for the Corps to assist or collaborate with the Department of Interior in the restoration of ecosystems degraded due to surface mining operations.

# SUSTAINABLE FISHERIES ACT

**LEGISLATIVE TITLE:** Sustainable Fisheries Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1801 et seq.

**OTHER TITLES AND POPULAR NAMES:** 1996 Amendments to the Magnuson Fishery Conservation and Management Act, Magnuson-Stevens Act

**SUMMARY:** This Act amends the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes. Among the new findings presented in the Act are that certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels (16 U.S.C. 1801). This amendment adds the facilitation of long-term protection of essential fish habitats to the purposes of the Magnuson Act.

The Act directs the Secretary of Commerce to establish regulation guidelines (16 U.S.C. 1855) to assist the Regional Fishery Management Councils (16 U.S.C. 1852) in describing and identifying essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in considering actions to ensure the conservation and enhancement of such habitat. The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. 1802). The Secretary of Commerce is to coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat. The Act directs Federal agencies to consult with the Secretary of Commerce with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

The Regional Fishery Management Councils may comment on and make recommendations to the Secretary of Commerce and Federal or State agencies concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority. The Regional Council may also comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority (16 U.S.C. 1852).

If the Secretary of Commerce receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend measures that can be taken by such agency to conserve such habitat (16 U.S.C. 1855).

**RESOURCES COVERED:** Fishery resources found off the coast of the U.S., anadromous species (defined as species of fish which spawn in fresh or estuarine waters of the U.S. and which migrate to ocean waters), and Continental Shelf fishery resources.

**COMPLIANCE REQUIREMENTS:** Within 30 days after receiving a recommendation from a Regional Council, a Federal agency shall provide a detailed response in writing to any Council providing comments and the Secretary regarding the matter. Responses are to include a

description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations (16 U.S.C. 1855).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of the Commerce Department; Regional Management Councils (New England; Mid-Atlantic; South Atlantic; Caribbean; Gulf of Mexico; Pacific; North Pacific; Western Pacific).

**Process and Product:** The Secretary of Commerce develops advisory guidelines, and regulations for implementation of this Act, and evaluates the plans prepared by the Regional Councils. The Regional Fishery Management Councils prepare and submit fishery management plans, periodic reports to the Secretary of Commerce, and provide comments or recommendations to state or Federal agencies regarding actions that may affect the habitat of resources their jurisdiction.

**Timing/Schedule:** Agencies must respond in writing to comments or recommendations from a Council within 30 days.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Magnuson Fishery Conservation and Management Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of Commerce (National Oceanic and Atmospheric Administration)

**Guidance Title:** Magnuson-Stevens Act Provisions; Essential Fish Habitat (published in the Federal Register January 2002, Vol. 67, No. 12, page 2343.

**Code of Federal Regulations Citation:** 50 C.F.R. 600-695, excluding Part 697.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities to facilitate the restoration and protection of essential fish habitats through Civil Works authorities and programs. Ecosystem restoration initiatives may complement the fishery management plans, and there may be opportunities to contribute to regional coordination and assistance efforts.

# TOXIC SUBSTANCES CONTROL ACT

**LEGISLATIVE TITLE:** Toxic Substances Control Act

**UNITED STATES CODE CITATION:** 15 U.S.C. 2601 - 2671

**OTHER TITLES AND POPULAR NAMES:** TSCA; ToSCA; The Asbestos Hazard Emergency Response Act of 1986

**SUMMARY:** Concern about many toxic chemicals lead Congress to pass the Toxic Substances Control Act in 1976. This Act, as last amended in 1986, is the Federal legislation which deals with the control of toxic substances. The Act consists of three subchapters, one of which regulates the control of toxic substances (such as polychlorinated biphenyls (PCBs)), another governs asbestos hazard emergency response, and another subchapter regulates indoor radon abatement. TSCA was designed to establish a system in which all chemicals would be evaluated before they are used to ensure they pose no unnecessary risk to human health, other living organisms and the environment. The risks and benefits of the chemicals “use” are to be balanced. The Administrator can waive compliance with any provision of this Act upon a request and determination by the President that the requested waiver is necessary in the interest of National Defense (15 U.S.C. 2621).

TSCA was also designed to mitigate the hazards of certain chemicals already in use. Because environmental contamination caused by stable PCB compounds and ozone layer destruction caused by chlorofluorocarbons could not be controlled under existing environmental legislation, Congress specifically included bans on the manufacture of PCBs and bans on the use of chlorofluorocarbon propellants under TSCA. By regulating these substances, Congress intended to control these problems at the source rather than legislating corrective actions once the materials were released to the environment.

**RESOURCES COVERED:** PCBs, asbestos in schools, lead-based paint hazards, and indoor radon abatement; chlorofluorocarbon propellants.

**COMPLIANCE REQUIREMENTS:** State and local regulations should be consulted when engaging in PCB, Asbestos, Radon, or Lead-Based Paint activities on Civil Works projects or properties.

The Environmental Protection Agency has worked for several years to discover and reduce PCB related risks, and these efforts have produced many rules on the chemicals. Environmental Protection Agency regulations are specific and complex regarding the requirements for PCB use, servicing, marking, storage for disposal, disposal, registration, spill cleanup, reporting, record keeping and manifesting. Environmental Protection Agency considers PCBs to be toxic, persistent, and bioaccumulative, and Environmental Protection Agency and industry are using the PCB rules to minimize many of the dangers of PCB exposure. (TSCAs primary impact on Federal facilities is in the management of PCB articles, equipment, transformers, capacitors, and wastes, which includes paints, waterproofing materials, light ballasts, and dielectric fluid in transformers and capacitors.)

PCBs - Any substance with a PCB concentration of 50 ppm or greater must be controlled. TSCA bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. In some cases, state regulations are in place that regulate PCBs more stringently than the Federal Program (40 C.F.R. 761). State regulations may supersede Federal Regulations in areas such as regulating PCBs as a hazardous waste. Also, Federal regulations, as well as some state regulations are very stringent regarding PCB spill reporting, and spill clean up levels.

Asbestos - Many states have enacted asbestos standards that are more stringent than the Federal Program (40 C.F.R. 61 and 763) concerning the certification of asbestos workers and the disposal of asbestos wastes. Asbestos in schools is regulated under TSCA. Renovation and Demolition involving asbestos is regulated under the Clean Air Act.

Radon and Lead - Many states have radon control standards and restrictions on the use of lead-based paint in place.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency and State regulatory agencies.

**Process:** At a minimum, Civil Works study and project managers must know where their PCBs are, their quantities, how they are being used, and what Environmental Protection Agency rules affect their activities. They must insure safe and proper PCB disposal, and must also keep an inventory of PCBs to maintain an annual report onsite. The rules also give them long and short term storage requirements, and specifications for marking, labeling, and record keeping. In addition, transformers must now be registered with local fire departments.

For Civil Works projects involved in PCB activities (such as using, storing, or disposing of PCBs), certain regulatory requirements must be met. TSCA regulations specify marking requirements for PCB equipment; inspection requirements to identify PCB leaks; special handling requirements for storage and disposal of PCBs; decontamination requirements for PCB spills; manifesting requirements; prohibitions on use or storage of PCB transformers in areas that may contaminate food or feed; requirements for registering PCB transformers with fire response personnel with primary jurisdiction, and prohibitions on installation of PCB transformers except in emergency situations.

**Product, Timing/Schedule:** PCB spills have special notification requirements and clean up requirements. Any PCB spill which poses a substantial risk to human health or environment or equals or exceeds 1 lb or more must be reported to the National Response Center (NRC) at (800) 424-8802. All spills, except minor leaks, should be reported. The criteria for cleanup is based on whether the spill is of high or low concentration of PCBs (40 C.F.R. 761.120, 761.123, and 761.125). Spill clean up should be initiated within 24 hours (48 hours for a transformer).

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; Engineer Technical Letter (ETL) 1110-1-118 (Hazards involved with use of asbestos containing material (ACM) and prohibition on use of friable asbestos); CECW-ON and CEEC-S Memorandum, 30 Jan 1989, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste for Civil Works Projects. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Memorandum, Secretary of the Army (Installations, Logistics and Environment), 28 April 1993, Lead-Based Paint Policy Guidance.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** A Guide on Remedial Actions at Superfund Sites with PCB Contamination, Environmental Protection Agency Fact Sheet, August 1990; Superfund Records of Decision Update (Guidance on Remedial Actions with PCB Contamination), Environmental Protection Agency Fact Sheet, September 1990; Environmental Protection Agency Part V: Guidance on Identification of Lead-Based Paint Hazards; Notice (60 Federal Register 47257); C.F.R. titles below.

**Federal Register Citation:** 60 F.R. 47257

**Code of Federal Regulations Citation:** 40 C.F.R. Part 761: Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; 40 C.F.R. Part 61: National Emission Standards for Hazardous Air Pollutants; 40 C.F.R. Part 763: Asbestos; 40 C.F.R. 766 Dibenzo-para-dioxins/dibenzofurans; 40 C.F.R. 790-2: Procedures Governing Test Consent Agreements and Test Rules; 40 C.F.R. 795: Provisional Test Guidelines; 40 C.F.R. 796: Chemical Fate Testing Guidelines; 40 C.F.R. 797: Environmental Effects Testing Guidelines; 40 C.F.R. 798: Health Effects Testing Guidelines; 40 C.F.R. 799: Identification of Specific Chemical Substance and Mixture Testing Requirements; 40 C.F.R. Part 403 Lead-based Paint Hazards.

**MANAGEMENT OPPORTUNITIES:** Good management practices include complying with the Use, Marking and Record keeping requirements; preparing a PCB Risk Management Plan; Complying with PCB Storage for Disposal and Disposal Requirements; keeping records of PCB inventories, shipments and disposal, preparing Annual Document Logs, and responding to PCB spills in accordance with the Spill Cleanup Policy. Survey all operations to determine where PCBs or PCB items are, or could be used, stored, or disposed of at your facility. If PCBs are present at any concentration, identify and record the source of contamination. Establishment of site specific plans/procedures for PCB equipment replacement with non-PCB equipment, e.g., transformer, ballasts, capacitors. Replacement of asbestos containing material (ACM) with non-AMC during routine operation and maintenance (O&M) activities on civil works projects. Inspecting Corps of Engineering owned/leased housing or buildings for indoor radon, asbestos in schools and lead-based paint hazards. Implementing abatement projects for property found to have lead-based paint or radon exceeding established health risk criteria.

## WATER RESOURCES DEVELOPMENT ACTS

The Water Resource Development Acts authorize the Secretary of the Army to study and/or implement various projects and programs for improvements to rivers and harbors of the United States and for other purposes. While not specifically environmental laws, a number of Water Resources Development Acts contain general environmental provisions pertinent to the Civil Works water resources development program or to the management of environmental resources. This section provides summaries of these provisions, as well as statements about implementation guidance where available. A number of other sections from these Acts pertain to specific projects or studies for environmental purposes. These provisions are not included with these summaries.

### Water Resources Development Act of 1976 (PL 94-587)

**Section 150** (42 U.S.C. 1962d-5e) Water Resources Planning, Wetland Areas, authorizes the Chief of Engineers to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. The Act identifies several conditions in which the Chief of Engineers may establish wetland areas under this authority: 1) environmental, economic and social benefits of the wetland area justify the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such water resources project; 2) the increased cost of such wetland area shall not exceed \$400,000; and 3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes. This provision does not include any requirement for non-Federal cost-sharing and has been supplanted with the partnership principles established by WRDA 1986. Instead, Section 204 of WRDA 1992 (33 U.S.C. 2326) is currently the primary authority for implementation of projects for the use of dredged material to protect, restore, or create aquatic and related habitats. See: ER 1105-2-100

### Water Resources Development Act of 1986 (PL 99-662)

**Section 704(b)** (33 U.S.C. 2263) Study of Corps Capability to Conserve Fish and Wildlife, authorizes the Secretary of the Army to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. A non-Federal cost share of 25 percent is required. A limit was not placed on the Federal expenditures per project; however, a \$5 million limit on total Federal expenditures for the program was established.

**Section 906** (33 U.S.C. 2283) Fish and Wildlife Mitigation. This section provides that, for new projects, necessary mitigation measures shall be undertaken before or concurrently with project construction, as determined appropriate by the Secretary of the Army. It provides general authority to undertake mitigation measures for projects, whether completed, underway or unstarted, including acquisition of any needed related lands (excluding condemnation in connection with projects already completed or well underway). Mitigation costs shall be allocated to the project purposes and cost shared accordingly. It requires that feasibility reports contain a specific plan to mitigate fish and wildlife losses, unless a determination is made that there would be negligible adverse impact. Section 906(a)(2) states that projects authorized prior to the enactment of this Act on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

**Subsection 906(b)** authorized the Secretary to provide limited mitigation for projects under his jurisdiction without project-specific congressional legislation. The limitations are: (1) Land acquisition will be on a willing seller basis if 10 percent or more of the project is physically completed as of 17 November 1986; (2) Acquisition of water or interest therein shall not be by condemnation; and (3) No more than \$30,000,000 may be obligated in any fiscal year to study and implement fish and wildlife mitigation under this authority, with a single project limit of \$7,500,000 or 10 percent of total project

costs (including the mitigation), whichever is greater. Policy under current budget constraints does not provide for implementation of subsection 906(b).

**Subsection 906(c)** requires that costs for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among the purposes which caused the need for mitigation, and cost shared to the same extent as other costs for such project purposes are shared or reimbursed. These provisions apply to all costs incurred after the date of the Act for the above specified purposes. When such costs are covered by contracts entered into prior to the date of enactment of this Act, the costs shall not be recovered without the consent of the non-Federal sponsor, or when costs are recovered when the contracts are complied with or renegotiated.

**Subsection 906(d)** requires that reports to Congress contain either a determination by the Secretary that such projects will have negligible adverse impacts on fish and wildlife, or a recommendation with a specific plan to mitigate fish and wildlife losses created by the project. Mitigation plans are to ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. The requirement for justification of measures as outlined in ER 1105-2-100 was not rescinded, and the extent of mitigation is still dependent upon the extent of justifiable measures. (See WRDA 2000, Section 224, which amends this section)

**Section 906(e)** provides that for any project measures recommended to enhance fish and wildlife, the first costs of such enhancement shall be a Federal cost when the benefits are determined to be national, including: 1) benefits to species that are identified to be of national economic importance, as identified by the National Marine Fisheries Service, species that are subject to treaties or international convention, and anadromous fish; 2) benefits to listed threatened or endangered species, as listed by the Secretary of the Interior; and, 3) activities on lands managed as national wildlife refuges. When benefits do not qualify under the preceding criteria, non-Federal interests are to reimburse 25 percent of the costs. The non-Federal share of operations, maintenance and rehabilitation costs will, in all cases, be 25 percent. Policy under current budgetary constraints does not provide for implementation of subsection 906(e). (See WRDA 1999, Section 221, which amends this section by inserting after the second sentence the following: “Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project.”)

**Section 906(g)** states that subsections (a), (b) and (d) shall be deemed to supplement the responsibility and authority for the Secretary pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661), and nothing in this section is intended to affect that Act.

**Section 907** (33 U.S.C. 2284) Benefits and Costs Attributable to Environmental Measures, states that in the evaluation of benefits and costs of a water resources project, the benefits attributable to environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed equal to the costs for measures to produce those benefits.

Corps guidance states that the purpose of this language is to prevent the costs of fish and wildlife (EQ) measures included in a project from depressing the benefit-cost ratio of a project below 1.0 because benefits attributable to such EQ features are not expressed in monetary terms. Environmental measures, whether for mitigation or for ecosystem restoration, must still be justified, with consideration given to both non-monetary and monetary benefits and costs. At this time, traditional benefit cost analysis are not utilized because benefits from environmental measures are generally not quantified in dollars. Instead, benefits are quantified in appropriate units, and “with” and “without” conditions are described. A cost effectiveness analysis is conducted to ensure that least cost alternatives are identified for various levels of environmental output. Subsequently, an incremental cost analysis is conducted to compare the relative changes in outputs and costs for the various levels of expenditures being considered. If, in conjunction with ecosystem restoration alternatives, monetary benefits can be identified (e.g., commercial fishing or

recreation), these benefits are described as incidental outputs. (See ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information; also, Cost Effectiveness and Incremental Analysis, IWR Report 95-R-1.)

**Section 908** (33 U.S.C. 2285) Mitigation Fund, authorizes establishment of an Environmental Protection and Mitigation Fund, intended to support authorized pre-construction fish and wildlife mitigation activities for which the Fund would be reimbursed from initial project construction implementation funding. Section 908 has not been implemented since normal project funding would allow for accomplishing mitigation as an early project implementation item.

**Section 924** (33 U.S.C. 2294) Office of Environmental Policy, authorizes establishment of the Office of Environmental Policy in the Directorate of Civil Works in the Office of the Chief of Engineers. The section states that the Office shall be responsible for formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the Corps of Engineers. As implemented, the Office is intended to serve an internal and external coordination role for ensuring compliance with policies relating to environmental aspects of planning projects.

**Section 943** (33 U.S.C. 2303) Historical Properties, authorizes the Secretary to preserve, restore, and maintain those historic properties on water resource development project lands under the jurisdiction of the Department of the Army, if such properties have been entered into the National Register of Historic Places. (See ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; also the National Historic Preservation Act, Historic Sites, Buildings and Antiquities Act, and the Historical and Archeological Data Preservation Act)

**Section 1103**. Upper Mississippi River Plan. This section recognized the Upper Mississippi River System as a nationally significant ecosystem and a nationally significant commercial navigation system. It directed the Secretary of the Army, in consultation with the Secretary of the Interior and the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to undertake a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement.

**Section 1135** (33 U.S.C. 2294 note) Project Modifications for Improvement of Environment. Subsection 1135(a) authorizes the review of existing water resources projects to determine the need for modifications in the structures and operations of projects constructed prior to the date of enactment\* of this Act for the purpose of improving the quality of the environment in the public interest.

**Subsection 1135(b)** initially authorized a two year demonstration\* program for the purposes of making such modifications, in the structures and operations of water resources projects which are feasible and consistent with the authorized project purposes, and will improve the environment. A non-Federal cost share of 25 percent was specified. Subsection 1135(e) authorized appropriations not to exceed \$25 million for this section. \* (Section 304 of the Water Resources Development Act of 1990 (33 U.S.C. 2309a) amended this section by: a. Striking “before the date of enactment of this Act”; b. Striking references to a demonstration program, making it a continuing program; and c. Changing the appropriations limit to a \$15 million annual limit .) Corps guidance on implementing this section is provided in ER 1105-2-100 (See also WRDA 1990, 1992 and 1996). (This section was further amended by Section 506 of WRDA 1999, extending the use of this authority to the control of sea lamprey at any Great Lakes basin location.)

**Section 304** (33 U.S.C. 2309a) Project Modifications for Improvement of Environment, amended Section 1135 (33 U.S.C. 2294 note) of WRDA 1986 from a "demonstration program" to a continuing program. Maximum annual appropriations were established as \$15,000,000. This section also amended WRDA 1986 so that provisions are applicable to all water resources projects constructed by the Secretary, not just those constructed prior to enactment of WRDA 1986.

**Section 306** (33 U.S.C. 2316) Environmental Protection Mission, directs the Secretary to include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects. (See ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information).

**Section 307** (33 U.S.C. 2317) Wetlands, established, as part of the Corps water resources development program, an interim goal of no overall net loss of the Nation's remaining wetland base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands as defined by acreage and function. The section directs the Secretary to utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals. See ER 1105-2-100, ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information. Subsection 307(e) authorizes the Secretary to establish a training and certification program for wetland delineators.

**Section 312.** Environmental Dredging. This section authorized the Secretary of the Army to remove contaminated sediments from the navigable waters of the United States. There were two distinct authorities in Section 312. Section 312(a) provided for removal of contaminated sediments outside the boundaries of and adjacent to a Federal navigation project as part of the operation and maintenance of the project. Section 312(b) provided for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement if such removal was requested by a non-Federal sponsor and the sponsor agreed to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. Section 312 had an annual authorization of appropriations limit of \$10 million for Section 312(b) and a 5-year effective life. The authorities of Section 312 originally had an expiration date of 29 November 1995, but this terminating date was deleted in WRDA 1996. Also, see WRDA 1999, Section 224. (See ER 1165-2-501 or EP 1165-2-502). Guidance for implementing this section is contained in Policy Guidance Letter (PGL) No. 49, Section 312 of the Water Resources Development Act of 1990, Environmental Dredging, as amended by Section 205 of the Water Resources Development Act of 1996.

**Section 313** (33 U.S.C. 2320) Protection of Recreational and Commercial Uses. Directs the Secretary of Army to consider recreational impacts in planning projects and in operating and maintaining them. The Secretary may expend up to \$2 million annually to mitigate for adverse recreational impacts of maintenance, repair, rehabilitation, or reconstruction activities. A non-Federal sponsor must agree to share the costs. Policy Guidance Letter No. 33, Protection of Recreational Uses at Civil Works Projects, provides implementation guidance for this section.

### **Water Resources Development Act of 1992 (PL 102-580)**

**Section 202** amended Section 1135 of WRDA 1986 (33 U.S.C. 2309a) by increasing the annual appropriation limit for the program to \$25,000,000, and specifying that Congressional approval is required for modifications with costs estimated to exceed \$5,000,000.

**Section 203** (33 U.S.C. 2325) Voluntary Contributions for Environmental and Recreation Projects. This section authorizes the Secretary, in carrying out water resource projects for environmental protection and restoration, or a water resources project for recreation, to accept contributions of cash funds, materials, and services from persons, including governmental entities, but excluding the project sponsor. Under the authority of this section, the Corps may accept and use contributions (cash, funds, materials, and services) to provide for operation and/or maintenance of recreation areas and the protection and restoration of natural resources at water resource development projects. (See ER 1130-2-500, Partners and Support (Work Management Policies), and EP 1130-2-500, Partners and Support (Guidance and Procedures)).

**Section 204** (33 U.S.C. 2326) Beneficial Uses of Dredged Material. This section authorizes implementation of projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation or maintenance of an authorized navigation project. Section 204(c) requires that projects can be undertaken pursuant to this section only after non-Federal interests have entered into a cooperative agreement in accordance with the requirements of Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) in which the non-Federal interests to agree to provide 25 percent of construction costs including all lands, easements rights-of-way, and necessary relocations, as well as 100 percent of operations, maintenance, replacement, and rehabilitation costs associated with the project for the protection, restoration, and creation of aquatic and ecologically related habitats. Section 204(e) establishes an annual program limit of \$15 million. (See ER 1105-2-100) (See also WRDA 96, and Section 209 of WRDA 99, which amends this section)

**Section 225** (33 U.S.C. 2328) Challenge Partnership Program for the Management of Recreation Facilities. This section authorizes the Secretary of Army to develop and implement a program to accept contributions of funds, materials, and services from non-Federal public and private entities to be used in operating and managing recreation facilities and natural resources. The Corps is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and/or management and development of recreation facilities and natural resources where such facilities and resources are being maintained at complete Federal expense. The Corps' Challenge Partnership Program (formerly known as the Challenge Cost-Share Program) provides many opportunities for non-Federal public and private groups and individuals to contribute to and participate in the operation and/or management of recreation facilities and natural resources at Corps water resource development projects (see ER 1130-2-500, Partners and Support (Work Management Policies), and EP 1130-2-500, Partners and Support (Guidance and Procedures)).

**Section 333** amended Section 906(c) (33 U.S.C. 2283(c)) of WRDA 86 (Public Law 99-662) to provide that costs of lands, easements, rights-of-way, and relocations, required for fish and wildlife mitigation shall be allocated the same as other costs specified in the section, i.e., among the purposes which caused the need for mitigation, and cost shared to the same extent as other costs for such project purposes are shared or reimbursed.

## **Title V Contaminated Sediment and Ocean Dumping.**

**Section 502** (33 U.S.C. 1271) established a National Contaminated Sediment Assessment and Management Task Force, co-chaired by the Administrator of the Environmental Protection Agency, the Secretary of the Army, with membership consisting of representatives of the, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Geological Survey, and the Department of Agriculture. The Administrator and the Secretary can add a limited number of state representatives, representatives of ports, agriculture, and manufacturing, as well as representatives from limited public interest organizations. In addition to advising the Administrator and the Secretary, Section 502 (33 U.S.C. 1271 note) states that Task Force shall: review and comment on reports concerning aquatic sediment quality and aquatic sediment contamination throughout the Nation, programs for the research and development of sediment restoration methods, practices and technologies, selection of pollutants for development of aquatic sediment criteria and the schedule of development of such criteria;

advise appropriate officials in development of guidelines for restoration of contaminated sediments; make recommendations to appropriate officials concerning practices and measures to prevent contamination of aquatic sediments and to control sources of sediment contamination; review and assess means and methods for locating and constructing permanent, cost-effective, long-term disposal sites for dredged material not suitable for ocean dumping (as determined under the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq)).

### **Water Resources Development Act of 1996 (PL 104-303)**

**Section 204** (33 U.S.C. 2309a(a)) Restoration of Environmental Quality. This section amends Section 1135 of WRDA 1986. It includes provisions authorizing measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either at the project site or other locations that have been affected by the construction or operation of the project, if such measures do not conflict with authorized project purposes. The section also addresses non-Federal cost sharing and clarifies the Federal limit on individual projects. Not more than 80 percent of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section. The section also defines 'water resources project' to include a water resources project constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service). Preliminary guidance on this Section was provided in CECW-PM, Planning Guidance Letter #97-1 WRDA 96 Implementation, dated 19 November 1996. [More detailed implementation guidance is provided in ER 1105-2-100]

**Section 205** Environmental Dredging This section reestablished and amended the authorities of Section 312 of WRDA 90 by: (1) providing for removal and remediation of contaminated sediments under the authorities of Section 312(a) and Section 312(b); (2) raising the annual appropriation authorization from \$10 million to \$20 million; (3) deleting the termination date for the authorities of Section 312; and (4) giving priority to work at five locations: Brooklyn Waterfront, NY; Buffalo Harbor and River, NY; Ashtabula River, OH; Mahoning River, OH; and Lower Fox River, WI. Guidance for implementing this section (and Section 312 of WRDA 90) is contained in Policy Guidance Letter (PGL) No. 49, Section 312 of the Water Resources Development Act of 1990, Environmental Dredging, as amended by Section 205 of the Water Resources Development Act of 1996.

**Section 206** (22 U.S.C. 2330) Aquatic Ecosystem Restoration. This section provides a new authority to carry out projects to restore and protect aquatic ecosystems if the projects will improve the quality of the environment and is in the public interest, and is cost-effective. Non-Federal interests are required to provide 35% of the construction costs for these projects, including lands easements, rights-of-way and necessary relocations. Non-Federal interests also must agree to pay 100% of the operation, maintenance, replacement and rehabilitation costs of the project in accordance with regulations prescribed by the Secretary. Preliminary guidance on this section was provided in CECW-PM, Planning Guidance Letter #97-5 - Implementation of the Water Resources Development Act of 199 (WRDA 96), Section 206, Aquatic Ecosystem Restoration, dated 18 February 1997. [Additional guidance for implementing this provision is published in ER 1105-2-100] (See also Section 210 of WRDA 99, which amends this section)

**Section 207** (33 U.S.C. 2326; 106 Stat. 4826) Beneficial Uses of Dredged Material. This section amends Section 204 of WRDA 1992 by adding the following after subsection (d): (e) selection of dredged material disposal method. -- In developing and carrying out a project for navigation involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least-cost option if the Secretary determines that the incremental costs of such disposal method are reasonable in relation to the environmental benefits, including the benefits to the

aquatic environment to be derived from the creation of wetlands and control of shoreline erosion. The Federal share of such incremental costs shall be determined in accordance with subsection (c). [Guidance for implementing this provision is currently being developed. Guidance for implementing this section is contained in Policy Guidance Letter (PGL) No. 56, 5 November 1999, Beneficial Use of Dredged Material.

**Section 221** (42 U.S.C. 1962d-16) Planning and Assistance to States. This section expands the Corps' authority to provide planning assistance to states under the Section 22 Program (Water Resources Development Act of 1974, 42 U.S.C. 1962d-16) by expanding areas of planning assistance to include watersheds and ecosystems. The annual program funding authorization limit has been expanded from \$6 million to \$10 million, with an increase in per state expenditure from \$300,000 to \$500,000. Guidance on this section was provide via CECW-PF Memorandum, Implementation of Section 221, Planning Assistance to States, of the Water Resources Development Act of 1996, dated 7 January 1997. The memorandum notes revision of the existing authorization to include development, utilization, and conservation of the water and related resources of drainage basins, watersheds, and ecosystems within the boundaries of the states and Indian tribes. It encourages districts to look for opportunities to perform studies of these needs and opportunities, when identified as a state or tribal priority. The guidance also discusses cost-sharing provisions and appropriations limits.

**Section 225** (33 U.S.C. 610(a)) Melaleuca. This section adds the Melaleuca tree to the list of plants addressed under the Aquatic Plant Program, Section 104 of the Rivers and Harbors Act, as amended. Guidance on this section was provided via CECW-ON Memorandum, Implementation of Section 225 of the Water Resources Development Act of 1996" -- INFORMATION PAPER, dated 19 May 1997, which described the characteristics of the plant and likely problem areas, and informed major subordinate commands and district commands that the Melaleuca tree is now included in the list of aquatic plants considered under the Aquatic Plant Control Program.

**Section 232** (33 U.S.C. 2284b) Scenic and Aesthetic Considerations. This section states that [i]n conducting studies of potential water resources projects, the Secretary shall consider measures to preserve and enhance scenic and aesthetic qualities in the vicinity of such projects. Guidance on this Section was provide via CECW-PD Planning Guidance Letter No. 97-9, Scenic and Aesthetic Considerations, dated 1 July 1997. The guidance letter identifies existing guidance for the consideration of scenic and aesthetic qualities for proposed water resources projects and states that this guidance remains in effect. This guidance includes: ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; and Policy Guidance Letter No. 29, Expenditures on Aesthetics at Civil Works Projects.

### **Water Resources Development Act of 1999 ( PL 106-53)**

**Section 203** Contributions by States and Political Subdivisions. This section amends Section 5 of the Flood Control Act of June 22, 1936 (33 U.S.C. 701h) by inserting "or environmental restoration" after "flood control."

**Section 209** (33 U.S.C. 2326) Beneficial Uses of Dredged Material. This section amends Section 204 of the Water Resources Development Act of 1992 in subsection (c) by striking "cooperative agreement in accordance with the requirements of section 221 of the Flood Control Act of 1970" and inserting "binding agreement with the Secretary"; and by adding at the end the following: (g) Nonprofit entities— Notwithstanding section 221 of the Flood control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government."

**Section 210. Aquatic Ecosystem Restoration.** This section amends Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330) by adding at the end the following : “(2) Nonprofit entities—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d—5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.”

**Section 211. Watershed Management, Restoration, and Development.** This section amends Section 503 of the Water Resources Development Act of 1996 by adding the following watersheds: Regional Atlanta, GA; Clear Lake, CA; Fresno Slough, CA; Hayward Marsh, S. San Francisco Bay, CA; Kaweah River, CA; Lake Tahoe, CA/NV; Malibu Creek, CA; Lower St. Johns River, FL; Illinois River, IL; Truckee River, NV; Walker River, NV; Bronx River, NY; Catawba River, NC; Columbia Slough, OR; Cabin Creek, WV. It also states that nonprofit entities may be non-Federal sponsors for these projects, with the consent of the affected local government.

**Section 212.** (33 U.S.C. 2332) **Flood Mitigation and Riverine Restoration Program.** This section authorizes a Civil Works program for dual-purpose projects to: a) reduce flood hazards; and b) restore the natural functions and values of rivers in the U.S. Studies and projects carried out under this section shall be done in consultation and coordination with the Federal Emergency Management Agency, other appropriate Federal agencies, State and local agencies, and tribes. Studies conducted under this section shall be subject to cost sharing in accordance with section 105 of WRDA 1986 (33 U.S.C. 2215). Cost sharing for environmental restoration and non-structural flood control projects shall be as follows: A) non-Federal interests shall pay 35% of the project cost; B) non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects; and C) the value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph. Also, the non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section. Nonstructural approaches to preventing or reducing flood damages are emphasized, particularly projects that conserve, restore, and manage hydrologic hydraulic regimes and restore the natural functions and values of floodplains. Priority areas are listed for this program, and an independent review is called for, to evaluate the efficacy of the program in achieving the dual goals of flood hazard mitigation and riverine restoration. The Secretary of the Army must submit a report on the findings of the review to the Committee on Transportation and Infrastructure of the House of Representatives not later than April 15, 2003.

**Section 221. Enhancement of Fish and Wildlife Resources.** Section 906(e) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(e)) is amended by inserting after the second sentence the following; “Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project.”

**Section 224 Environmental Dredging.** This section amends Section 312 of the Water Resources Development Act of 1990 (33 U.S.C. 1272) by reducing the non-Federal cost share from 50% to 35% of the cost of removal and remediation of contaminated sediments. Costs of disposal of contaminated sediments removed under this section (formerly a non-Federal responsibility) are to be shared as a cost of construction. The annual appropriations limit is raised from \$20 million to \$50 million. Three additional areas are listed for priority work under this section: Passaic River and Newark Bay, NJ, Snake Creek, Bixby, OK, and Wilamette River, OR. See PGL No. 49 for Guidance on Environmental Dredging under this section.

**Section 506 Projects for Improvement of the Environment.** Section 1135(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2309a(c)) is amended by adding at the end the following: ““(2) Control of Sea Lamprey – Congress finds that (A) the Great Lakes navigation system has been

instrumental in the spread of sea lamprey and the associated impacts on its fishery; and (B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate."

**Section 509.** Upper Mississippi River Environmental Management Program. This section amends Section 1103 of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)). The Secretary of the Army is authorized to undertake, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin: "(i) a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement; and (ii) implementation of a long-term resource monitoring, computerized data inventory and analysis, and applied research program." It also calls for the establishment of an independent technical advisory committee to review projects, monitoring plans, and habitat and natural resource needs assessments. The Secretary of the Army must submit a report to Congress not later than December 31, 2004, and every sixth year thereafter, which evaluates the program, identifies accomplishments and needed adjustments.

**Section 515.** (33 U.S.C. 2333) Irrigation Diversion Protection and Fisheries Enhancement Assistance. This section authorizes the Secretary of the Army to provide technical planning and design assistance (not construction) to non-Federal interests and to conduct other site-specific studies to formulate and evaluate fish screens, fish passage devices, and other measures to decrease the incidence of juvenile and adult fish inadvertently entering irrigation systems. Not later than two years after the date of enactment of this Act, the Secretary shall submit to Congress a report on—1) fish mortality caused by irrigation water intake devices; 2) appropriate measures to reduce fish mortality; 3) the extent to which those measures are currently being employed in arid States; 4) the construction costs associated with those measures; and 5) the appropriate Federal role, if any, to encourage the use of those measures.

**Section 516.** (33 U.S.C. 2334) Innovative Technologies for Watershed Restoration. This section states that the Secretary of the Army shall examine using, and, if appropriate, encourage the use of, innovative treatment technologies, including membrane technologies, for watershed and environmental restoration and protection projects involving water quality.

**Section 559.** (33 U.S.C. 2335) Coastal Aquatic Habitat Management. This section authorizes the Secretary of the Army to cooperate with other agencies, and affected private entities, in the development of a management strategy to address problems associated with toxic microorganisms and the resulting degradation of ecosystems in the tidal and nontidal wetlands and waters of the U.S.

**Section 560.** (33 U.S.C. 2336) Abandoned and Inactive Noncoal Mine Restoration. This section authorized the Secretary to provide technical, planning, and design assistance to Federal and non-Federal interests for carrying out projects to address water quality problems caused by drainage and related activities from abandoned and inactive noncoal mines.

### **Water Resources Development Act of 2000 (P.L. 106-541)**

**Section 202.** (33 U.S.C. 2267a) Watershed and River Basin Assessments. This section authorizes the Secretary of the Army to assess the water resources needs of river basins and watersheds of the United States, including needs relating to: "(1) ecosystem protection and restoration; (2) flood damage reduction; (3) navigation and ports; (4) watershed protection; (5) water supply; and (6) drought preparedness." These assessments are to be carried out in coordination with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the heads of other appropriate agencies, and in consultation with Federal, tribal, State, interstate, and local governmental entities. Priority is to be given to the Delaware, Kentucky, Potomac, Susquehanna, and Willamette River basins. The non-Federal share of the costs of an

assessment carried out under this section shall be 50 percent. Up to 25% of the costs of the assessment may be in the form of in-kind contributions provided by the non-Federal interests, such as services, materials, supplies, or other in-kind contributions. Guidance on this section is provided in CECW-BW Memorandum entitled Implementation Guidance for Section 202 of the Water Resources Development Act 2000, Watershed and River Basin Assessments, which Amends Section 729, WRDA 86, Study of Water Resources Needs of River Basins and Regions, dated 29 May 2001. The basic policy related to watershed activities is found in Policy Guidance Letter No. 61, Application of Watershed Perspective to Corps of Engineers Civil Works Programs and Activities.

**Section 203.** (33 U.S.C. 2269) Tribal Partnership Program. This section authorizes the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, to study and determine the feasibility of carrying out water resources development projects that will benefit tribes, and that are located within Indian country. These studies may address projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. This section also provides for consultation and coordination with the Secretary of the Interior, for cost-sharing subject to the ability of the non-Federal interest to pay, and credit for in-kind contributions. Guidance on this section is provided in CECW-PG Memorandum entitled Implementation of Sections 203(d)(1) and 204 of the Water Resources Development Act of 2000 – Ability to Pay, dated 27 February 2001.

**Section 208** (33 U.S.C. 2338) Reburial and Conveyance Authority. This section authorizes the Secretary of the Army, in consultation with affected Indian tribes, to identify and set aside areas at civil works projects that may be used to rebury Native American remains that have been discovered on project land, and that have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law. The Secretary may also convey to an Indian tribe these areas to be used as a cemetery, subject to the retention by the Secretary of any property interests necessary to carry out the authorized purposes of the project. Recovery, preparation and reburial costs will be performed at Federal expense. Guidance for this section is provided in CECW-PG Memorandum dated 1 May, 2001, Initial Implementation Guidance for Section 208 of the Water Resources Development Act of 2000—Reburial and Conveyance Authority for Native American Remains, see: [http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp\\_and\\_dev/WRDA2001guidanceindex.htm](http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/WRDA2001guidanceindex.htm)

**Section 210.** Nonprofit entities. This section provides the authority by which nonprofit entities may act as a non-Federal sponsor for certain projects undertaken by the Corps. The three provisions that are amended by this section are Section 312 of the WRDA 1990, Environmental Dredging; Section 602 of the WRDA 1986, Lakes Program; and Section 1135 of WRDA 1986, Project Modifications for Improvement of Environment. A sponsor may be any nonprofit organization that is financially capable of providing the non-Federal share of the project costs and undertaking any required operation, maintenance, repair, replacement, and rehabilitation of the project. Additionally, a potential sponsor must also be able to provide the required lands, easements, rights-of-way, relocations and dredged or excavated material disposal areas. Another requirement is that the affected local government must consent, in writing, to the non-profit entity being a sponsor. Guidance on this section is provided in CECW-PD Memorandum dated 2 March 2001, Implementation Guidance for Section 210 of the Water Resources Development Act of 2000.

**Section 223.** (33 U.S.C. 2201 note) Monitoring. This section directs the Secretary of the Army to conduct a monitoring program of the economic and environmental results of up to 5 eligible projects. The monitoring shall be carried on for 12 years, with performance reports every three years.

**Section 224.** Fish and Wildlife Mitigation. This section amends section 906(d) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(d)), requiring that Corps mitigation projects be designed to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of

water resources projects. This section also directs the Comptroller General to conduct an investigation of the effectiveness of the concurrent mitigation requirements of Section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283). A panel of independent scientists is established to assist with the study. The study shall determine whether or not there are instances in which less than 50 percent of required mitigation is completed before initiation of project construction and the number of such instances, and the extent to which mitigation projects restore natural hydrologic conditions, restore native vegetation, and otherwise support native fish and wildlife species. It shall also assess the methods used by the Corps to monitor and evaluate mitigation projects, and compare Corps mitigation project design, construction, monitoring, and evaluation practices with those used in other publicly and privately financed mitigation projects. A report is due not later than one year after the date of enactment of this Act.

## **WATER RESOURCES PLANNING ACT**

**LEGISLATIVE TITLE:** Water Resources Planning Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 1962 et seq

**OTHER TITLES AND POPULAR NAMES:** WRPA

**SUMMARY:** The Act provides for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources, through the establishment of a water resources council (42 U.S.C. 1962a) and river basin commissions (42 U.S.C. 1962b), and by providing financial assistance to the States in order to increase State participation in such planning (42 U.S.C. 1962c). It established a policy to encourage the conservation, development, and utilization of the water and related land resources of the United States on a comprehensive and coordinated basis by the Federal government, states, localities, and private enterprise with the cooperation of all affected agencies, governments, individuals, corporations, business enterprises, and others concerned (42 U.S.C. 1962).

The U.S. Water Resources Council, (42 U.S.C. 1962a) includes the Secretaries of Interior, Agriculture, Army Health, Education and Welfare, and the Chairman of the Federal Power Commission, with the heads of other agencies participating when matters affecting their responsibilities are to be considered by the Council. The Chairman of the Council is to be designated by the President.

The Council was charged with (a) maintaining a continuing study and preparing biennial assessments, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and (b) maintaining a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies. It was also to appraise the adequacy of existing and proposed policies and programs to meet such requirements and make recommendations to the President with respect to Federal policies and programs. The Council was to review plans developed by the river basin commissions for (1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved; (2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and (3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goal (42 U.S.C. 1962a-3).

The Act required the Council to establish principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects (42 U.S.C. 1962a-2). Such procedures could include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission. The Council was also instructed to develop standards and criteria for economic evaluation of water resource projects (42 U.S.C. 1962a-2).

**RESOURCES COVERED:** Water and land related resources.

**COMPLIANCE REQUIREMENTS:** The Principles and Standards were replaced by the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies in 1983. The Corps must follow these Principles and Guidelines in formulating and evaluating water resources implementation studies as part of the Civil Works program. Guidance is found in ER 1105-2-100.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Water Resources Council; other Federal and state agencies, localities, and private enterprise.

**Process:** Assessment of water supply and demand; review of river basin plans. The Council was not given a project review function.

**Product:** Reports and recommendations. Principles and Standards.

**Timing/Schedule:** Biennial assessments, or at such less frequent intervals as the Council may determine.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management. Federal Register/Vol 65, No. 202/Wed. October 18, 2000 p. 62566.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 18 C.F.R. 701

**MANAGEMENT OPPORTUNITIES:** While the Water Resources Council has not been funded in a number of years, some of the river basin commissions continue. There may be opportunities for the Corps to work with these commissions as part of ecosystem restoration initiatives, watershed studies and other comprehensive planning and management initiatives, as well as through the Section 22, Planning Assistance to States Program.

# WATERSHED PROTECTION AND FLOOD PREVENTION ACT

**LEGISLATIVE TITLE:** Watershed Protection and Flood Prevention Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1001 et seq; 33 U.S.C. 701b

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act authorizes the Secretary of Agriculture to cooperate with states and other public agencies in works for flood prevention and soil conservation, as well as the conservation, development, utilization, and disposal of water. It established the Small Watershed Program through which the Natural Resource Conservation Service (NRCS) (formerly the Soil Conservation Service)(7 U.S.C. 6962) constructs dams and implements other measures in upstream watershed for a variety of purposes including flood control.

**RESOURCES COVERED:** water use, disposal, control, soil conservation

**COMPLIANCE REQUIREMENTS:** This Act imposes no requirements on Corps Civil Works projects. The Corps cooperates fully with the NRCS in carrying out its program and strives to bring about coordination between the this program and the programs of the Corps through interagency agreements. (See EP 1165-2-2, Interagency Agreements, Appendix B.)

**REVIEW AND CONSULTATION REQUIREMENTS:** Any plans for works of improvement involving an estimated Federal contribution to construction costs in excess of \$5 million or including any structure having total capacity in excess of 2500 acre-feet [which affects public land or health, or water pollution] shall be submitted to the Secretary of the Interior, Secretary of the Army, Secretary of Health and Human Services, or the Administrator of the EPA for his views and recommendations at least 30 days prior to transmission of the plan to the Congress through the President. The views and recommendations of [the above mentioned Secretaries], if received by the Secretary [of Agriculture] prior to the expiration of the above 30 day period shall accompany the plan transmitted by the Secretary to the Congress through the President (16 U.S.C. 1005(4)).

**Who Reviews or Consults:** US Department of Agriculture, Natural Resources Conservation Service

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Executive Order 10913, 18 January 1961, Amending Executive Order No. 10584 Prescribing Rules and Regulations Relating to the Administration of the Watershed Protection and Flood Prevention Act. Sections 3 and 4 provide for notification and coordination of agencies in the use, conservation, and development of water and related land resources.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** US Department of Agriculture (Natural Resources Conservation Service)

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 7 C.F.R. 622; 33 C.F.R. 222

**MANAGEMENT OPPORTUNITIES:** The Corps can coordinate with the NRCS as part of water resources planning activities. Watershed studies and comprehensive studies in particular provide opportunities to share information and coordinate initiatives.

## WILD AND SCENIC RIVERS ACT

**LEGISLATIVE TITLE:** Wild and Scenic Rivers Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1271 et seq.

**OTHER TITLES AND POPULAR NAMES:** WSRA

**SUMMARY:** The Act establishes the policy that certain rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations (16 U.S.C. 1271). The Act both identifies specific river reaches for designation as wild or scenic, and provides criteria to be used for classifying additional river reaches (16 U.S.C. 1272). “Wild river areas” are those rivers or sections of rivers that are free from impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent the vestiges of primitive America. “Scenic river areas” are those rivers or sections of rivers that are free from impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. “Recreational river areas” are those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (16 U.S.C. 1273)

The National Wild and Scenic River System was established to protect the environmental values of free-flowing streams from degradation by impacting activities, including water resources projects. The system is administered jointly by the U.S. Forest Service, Department of Agriculture, and the National Park Service, Department of the Interior. Corps activities on the streams included in the system are subject to review by whichever of these agencies is responsible for the specific stream. In all planning for the use and development of water and related land resources, consideration shall be given to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss such potentials (16 U.S.C. 1276(d)).

**RESOURCES COVERED:** Free flowing streams; Scenic, recreational, geologic, fish and wildlife, historic, cultural, or similar values of streams.

**COMPLIANCE REQUIREMENTS:** Discharges into streams, impoundments, diversions, channel alterations, and other measures can alter the stream discharge, velocity, and channel dimensions. These hydraulic changes may cause modifications to the free-flowing character of the stream, resulting in loss or diminution of its environmental values. The Wild and Scenic River Act requires consideration of the impacts and consultation with the responsible agency prior to implementation of a project. Corps activities on the streams included in the National Wild and Scenic River System are subject to review by whichever of these agencies is responsible for the specific stream. Plans to avoid or minimize impacts to wild and scenic rivers must be disclosed and evaluated in project reports and NEPA documents. Operation plans may be required to ensure that impacts are avoided or minimized.

**Regulatory program:** In any 404 permit application, the Corps should consult with the National Park Service or the Forest Service as appropriate to determine if the proposed project will be compatible with the Wild & Scenic designation. As for nationwide permits, it would be advisable to coordinate unofficially with these two agencies. Candidate rivers should also be considered during consultation.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, Department of the Interior; U.S. Forest Service, Department of Agriculture.

**Process:** Consult the Act and amendments, as well as with the appropriate agency to identify designated wild and scenic rivers (including potential rivers), or portions thereof, during the planning phases of water resources projects. Coordination shall be carried out with the agency having management or program responsibility for the particular river.

**Product:** Project reports and NEPA documents should include a description of potential impacts on designated rivers or reaches of designated rivers if applicable.

**Timing/Schedule:** For Corps projects, initial identification of designated rivers or river reaches in the vicinity of the project is done during the reconnaissance phase, with follow-up review of current listings during the feasibility and detailed design phases.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; EP 1165-2-1, Digest of Water Resources Policies and Authorities

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320 and 325

**FOR MORE INFORMATION SEE:** The Wilderness Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of the Interior (National Park Service) and the Department of Agriculture (U.S. Forest Service).

**Guidance Title:** National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas, F.R. Volume 47, No. 173, September 7, 1982

**Federal Register Citation:** 47 F.R., No. 173

**Code of Federal Regulations Citation:** 36 C.F.R. 297

**MANAGEMENT OPPORTUNITIES:** The Corps may transfer jurisdiction of any project lands which include all or portions of a wild and scenic river to the Secretary of the Interior for administration in accordance with the environmental preservation aspects of the Act. Federal agencies, like the Corps, may provide assistance to States in developing plans for preserving and managing wild and scenic rivers under their jurisdiction.

# WILDERNESS ACT

**LEGISLATIVE TITLE:** The Wilderness Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1131 et seq

**OTHER TITLES AND POPULAR NAMES:** WA

**SUMMARY:** This Act establishes a National Wilderness Preservation System to be composed of Federally owned areas designated by Congress as “wilderness areas”, which are to be managed in a manner that will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character. With certain exceptions, the Act prohibits motorized equipment, structures, installations, roads, commercial enterprises, aircraft landings, and mechanical transport. The Act permits mining on valid claims, access to private lands, fire control, insect and disease control, grazing, water-resource structures (upon the approval of the President), and visitor use (16 U.S.C. 1133). Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area.

**RESOURCES COVERED:** National wilderness areas, and their associated ecological, geological and other features.

**COMPLIANCE REQUIREMENTS:** In planning a project, Federal agencies must determine whether or not the activity will affect a designated wilderness area. In making this determination, the Corps should consult with the appropriate administering agency. Typically, wilderness areas are located within either National Parks (administered by the National Park Service), National Wildlife Refuges (administered by U.S. Fish and Wildlife Service), National Forests (administered by the U.S. Forest Service), or public lands (administered by Bureau of Land Management). These contacts can assist the Corps in determining whether a proposed project falls among the activities prohibited in the wilderness area; how proposed activities may be mitigated; and whether exemptions to the prohibitions are necessary and can be obtained. For example, it may be possible to substitute temporary structures and roads, or certain kinds of equipment in order to avoid adverse effects on a wilderness area. The Corps of Engineers must get the appropriate agency approval and for some activities, a permit may be required.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, Fish and Wildlife Service, Forest Service, and Bureau of Land Management, Department of Agriculture, Department of the Interior

**Process and Product:** In planning a project, the Corps consults with the appropriate administering agency Federal agencies to determine whether or not the activity will affect a designated wilderness area.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.  
**Civil Works Construction:** None specific to this statute.  
**Civil Works Operations:** None specific to this statute.  
**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Wild and Scenic Rivers Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** U.S. Department of Interior; U.S. Forest Service; Bureau of Land Management

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 50 C.F.R. 35; 43 C.F.R. 19: Office of the Secretary of Interior. Wilderness Preservation; 36 C.F.R. 293: U.S. Forest Service, Wilderness and Primitive Areas; 36 C.F.R. 261: U.S. Forest Service, Prohibitions; 36 C.F.R. 219: National Forest System Land & Resource Management Planning. 43 C.F.R. 8560: Bureau of Land Management, Designated Wilderness Areas; Procedures for Management.

**MANAGEMENT OPPORTUNITIES:** While unlikely, it is not impossible that Corps land could be included in a Wilderness Bill. The main requirement is that it consists of 5,000 acres of land in a generally roadless state. If a piece of land was found to be such a size on a Corps project, it could be kept in its primitive state so that it may included in a Wilderness Bill. This means no developments (campgrounds, roads, etc.) should take place in that property.